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Contents

Federal Register

Vol. 84, No. 58

Tuesday, March 26, 2019

Agriculture Department

See Animal and Plant Health Inspection Service

See Federal Crop Insurance Corporation

See Forest Service

Air Force Department

NOTICES

Environmental Impact Statements; Availability, etc.:

Basing of the Permanent F-22 Formal Training Unit,
11289–11290

Meetings:

2019 Public Interface Control Working Group, 11289

Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

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

Certification of Qualifying State Relief From Disabilities
Program, 11324–11325

Animal and Plant Health Inspection Service

NOTICES

List of Regions Affected by African Swine Fever:

Addition of China, 11281–11282

Supplemental Requirements for Importation:

Fresh Citrus from Colombia into the United States,
11279–11281

Bureau of Consumer Financial Protection

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 11288–11289

Centers for Disease Control and Prevention

PROPOSED RULES

World Trade Center Health Program:

Petition 021—Deep Vein Thrombosis and Pulmonary
Embolism; Finding of Insufficient Evidence, 11267–
11268

Centers for Medicare & Medicaid Services

NOTICES

Charter Renewal:

Advisory Panel on Outreach and Education; meeting,
11302–11304

Children and Families Administration

PROPOSED RULES

Head Start Service Duration Requirements, 11269–11275

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 11304–11305

Coast Guard

NOTICES

Meetings:

Port Access Route Study: The Areas Offshore of
Massachusetts and Rhode Island, 11314–11319

Commerce Department

See Economic Analysis Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

NOTICES

Meetings:

Agricultural Advisory Committee, 11288

Defense Acquisition Regulations System

NOTICES

Acquisition of Items for Which Federal Prison Industries
Has a Significant Market Share, 11291

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

Defense Federal Acquisition Regulation Supplement;
Government Property, 11290–11291

Defense Department

See Air Force Department

See Defense Acquisition Regulations System

See Navy Department

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 11301–11302

Economic Analysis Bureau

PROPOSED RULES

International Services Surveys:

BE-140 Benchmark Survey of Insurance Transactions by
U.S. Insurance Companies with Foreign Persons,
11256–11259

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Application to Export Liquefied Natural Gas:

Annova LNG Common Infrastructure, LLC, 11291–11292

Meetings:

State Energy Advisory Board, 11292–11293

Environmental Protection Agency

NOTICES

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

Foreign Purchaser Acknowledgement Statement of
Unregistered Pesticides, 11296–11297

National Emission Standards for Hazardous Air
Pollutants for Semiconductor Manufacturing
(Renewal), 11299–11300

NESHAP for Hydrochloric Acid Production, 11294–11295

NESHAP for Polyvinyl Chloride and Copolymer
Production Area Sources, 11298

New Source Performance Standards for New Residential
Hydronic Heaters and Forced-Air Furnaces, 11297–
11298

New Source Performance Standards for Nitric Acid Plants
for which Construction, Reconstruction or
Modification Commenced after October 14, 2011,
11299

New Source Performance Standards for Stationary
Compression Ignition Internal Combustion Engines,
11295–11296

Federal Aviation Administration**RULES**

Airworthiness Directives:

International Aero Engines Turbofan Engines, 11214–11216

Pratt and Whitney Division Turbofan Engines, 11211–11214

NOTICES

Noise Compatibility Program:

Westover Metropolitan Airport, Chicopee, MA, 11390–11391

Federal Communications Commission**RULES**

Advanced Methods to Target and Eliminate Unlawful Robocalls, 11226–11232

Low Power TV, TV Translator, and FM Broadcast Station Reimbursement, 11233–11253

Federal Crop Insurance Corporation**RULES**

Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions; Withdrawal, 11211

Federal Deposit Insurance Corporation**NOTICES**

Meetings; Sunshine Act, 11300–11301

Federal Energy Regulatory Commission**NOTICES**

Combined Filings, 11293–11294

Federal Reserve System**NOTICES**

Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 11301

Federal Transit Administration**NOTICES**

Environmental Impact Statements; Availability, etc.:

Tacoma Dome Link Extension, King and Pierce Counties, WA, 11391–11394

Food and Drug Administration**NOTICES**

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

Clinical Laboratory Improvement Amendments Waiver Applications, 11307–11309

Prevention of Salmonella Enteritidis in Shell Eggs During Production; Recordkeeping and Registration Provisions, 11309–11312

Guidance:

Standards Development and the Use of Standards in Regulatory Submissions Reviewed in the Center for Biologics Evaluation and Research, 11305–11307

Foreign Claims Settlement Commission**NOTICES**

Meetings; Sunshine Act, 11325

Foreign-Trade Zones Board**NOTICES**

Production Activity:

AGCO Corp.; Foreign-Trade Zone 119; Minneapolis–St. Paul, MN, 11283

Whirlpool Corp.; Foreign-Trade Zone 151; Findlay, OH, 11282–11283

Forest Service**NOTICES**

Meetings:

Virginia Resource Advisory Committee, 11282

General Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 11301–11302

Health and Human Services Department

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

NOTICES

Meetings:

Advisory Committee on Blood and Tissue Safety and Availability; Amendment, 11313–11314

Request for Nominations:

Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, 11312–11313

Homeland Security Department

See Coast Guard

See Transportation Security Administration

See U.S. Customs and Border Protection

Housing and Urban Development Department**NOTICES**

Privacy Act; Matching Program, 11321–11323

Interior Department

See Ocean Energy Management Bureau

Internal Revenue Service**RULES**

Reportable Transactions Penalties, 11217–11222

PROPOSED RULES

Certain Transfers of Property to Real Estate Investment Trusts, 11259–11263

Updating Section 301 Regulations to Reflect Statutory Changes, 11263–11266

NOTICES

Low Income Taxpayer Clinic Grant Program:

Availability of 2019 Supplemental Grant Application Period, 11396–11397

International Trade Administration**NOTICES**

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

Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement, 11285–11286

Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Panama Trade Promotion Agreement, 11283–11284

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Crystalline Silicon Photovoltaic Products from Taiwan, 11284–11285

International Trade Commission**NOTICES**

Complaints:

Certain Female Fashion Dresses, Jumpsuits, Maxi Skirts and Accountrements, 11323–11324

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

See Foreign Claims Settlement Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 11325–11326

Proposed Consent Decrees:

CERCLA, 11326

CERCLA and Clean Water Act, 11326–11327

Safe Drinking Water Act, 11327

Labor Department**NOTICES**

Secretary's Order:

Chief Data Officer and DOL Data Board, 11327–11329

National Aeronautics and Space Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 11301–11302, 11329–11331

National Credit Union Administration**NOTICES**

Privacy Act; Systems of Records, 11331–11334

National Institutes of Health**NOTICES**

Meetings:

Center for Scientific Review, 11314

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Exclusive Economic Zone Off Alaska:

Essential Fish Habitat Amendments; Correction, 11254

Pollock in Statistical Area 620 in the Gulf of Alaska, 11255

PROPOSED RULES

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

Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 6, 11275–11278

NOTICES

Endangered and Threatened Species:

Recovery Planning Workshop and Request for Information to Inform Recovery Planning for the Oceanic Whitetip Shark, 11286–11288

Navy Department**RULES**

Medical and Dental Care for Eligible Persons at Navy Department Facilities, 11225

Missing Persons Act, 11224–11225

Non Naval Medical and Dental Care, 11225

Nuclear Regulatory Commission**NOTICES**

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 11334–11345

Meetings; Sunshine Act, 11345

Ocean Energy Management Bureau**RULES**

Oil and Gas and Sulfur Operations in the Outer Continental Shelf:

Civil Penalties Inflation Adjustments, 11222–11224

Pipeline and Hazardous Materials Safety Administration**RULES**

Pipeline Safety:

Exercise of Enforcement Discretion Regarding Farm Taps, 11253–11254

NOTICES

Pipeline Safety:

Request for Special Permit; Gulf South Pipeline Co., LP, 11395

Pipeline Safety: Request for Special Permit:

Golden Pass LNG Terminal, LP, 11394

Presidential Documents**EXECUTIVE ORDERS**

Colleges and Universities: Free Inquiry, Transparency, and Accountability at, Effort to Improve (EO 13864), 11399–11404

Securities and Exchange Commission**NOTICES**

Applications:

Wells Fargo Securities, LLC, et al., 11371–11375

Meetings:

Fixed Income Market Structure Advisory Committee, 11371

Meetings; Sunshine Act, 11381–11382, 11385

Self-Regulatory Organizations; Proposed Rule Changes:

Cboe BZX Exchange, Inc, 11364–11371

Miami International Securities Exchange, LLC, 11347–11354, 11385–11389

MIAX PEARL, LLC, 11359–11362

Nasdaq BX, Inc., 11362–11364

Nasdaq PHLX, LLC, 11345–11347

New York Stock Exchange, LLC, 11354–11357, 11382–11385

NYSE Arca, Inc., 11375–11379

The Nasdaq Stock Market, LLC, 11357–11359, 11379–11381

Small Business Administration**NOTICES**

Disaster Declaration:

Georgia, 11389

State Department**NOTICES**

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

Affidavit of Identifying Witness, 11389–11390

Transportation Department

See Federal Aviation Administration

See Federal Transit Administration

See Pipeline and Hazardous Materials Safety Administration

NOTICES

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

Foreign Air Carrier Application for Statement of Authorization, 11395–11396

Transportation Security Administration**NOTICES**

Review of the 2018 Biennial National Strategy for
Transportation Security, 11320–11321

Treasury Department

See Internal Revenue Service

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

Commercial Gaugers and Laboratories; Accreditation and
Approval:

NMK Resources, Inc., Kenner, LA, 11319–11320

NMK Resources, Inc., Roselle, NJ, 11320

Separate Parts In This Issue**Part II**

Presidential Documents, 11399–11404

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.

3 CFR**Executive Orders:**

13864.....11401

7 CFR

457.....11211

14 CFR

39 (2 documents) 11211,
11214

15 CFR**Proposed Rules:**

801.....11256

26 CFR

301.....11217

Proposed Rules:

1 (2 documents) 11259,
11263

30 CFR

550.....11222

553.....11222

32 CFR

718.....11224

728.....11225

732.....11225

42 CFR**Proposed Rules:**

88.....11267

45 CFR**Proposed Rules:**

1302.....11269

47 CFR

52.....11226

64.....11226

73.....11233

49 CFR

192.....11253

50 CFR

679 (2 documents) 11254,
11255

Proposed Rules:

622.....11275

Rules and Regulations

Federal Register

Vol. 84, No. 58

Tuesday, March 26, 2019

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.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC -18-0002]

RIN 0563-AC57

Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions; Withdrawal

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of withdrawal of final rule.

SUMMARY: This action informs the public that the Federal Crop Insurance Corporation (FCIC) is withdrawing a final rule with request for comments published in the **Federal Register** on December 10, 2018, titled Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions. FCIC updated the Forage Seeding Crop Provisions (CP) to better reflect current agricultural practices and allow for variations in insurance provisions based on regionally-specific agronomic conditions and potential future expansions. The Forage Seeding CP cover losses from insured perils during the year of planting forage and would provide continuous coverage throughout the year of planting effective for the 2020 crop year. FCIC withdraws the Forage Seeding final rule due to the need to address outstanding issues, conduct additional research, and obtain data for program expansion to ensure continuous coverage between the year of planting and after the crop has been established.

DATES: As of March 26, 2019, the final rule with request for comments published on December 10, 2018, at 83 FR 63383, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Francie Tolle, Director, Product Management, Product Administration and Standards Division, Risk

Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION: FCIC is withdrawing the Forage Seeding CP Final Rule with request for comments published on December 10, 2018 (83 FR 63383-63389). These changes were to be effective for the April 30, 2019, contract change date for the 2020 crop year.

The Forage Seeding CP provide insurance during the year of planting the forage. The Forage Production CP allow insurance to continue after the forage crop has been established. The two policies are connected and must be considered together. FCIC intended to immediately follow the Forage Seeding Final Rule with a Forage Production Final Rule, to be published effective June 30, 2019.

Due to the need to address outstanding issues for the Forage Seeding Final Rule identified during the comment period, obtain data for program expansion, and prepare and publish the Forage Production Final Rule to be effective for the same crop year as the Forage Seeding, FCIC withdraws the Forage Seeding Final Rule and will resubmit simultaneously with the Forage Production final rule at a later date.

Therefore, as of March 26, 2019, the final rule with request for comments published on December 10, 2018, at 83 FR 63383, is withdrawn.

Martin Barbre,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2019-05718 Filed 3-25-19; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0924; Product Identifier 2018-NE-34-AD; Amendment 39-19600; AD 2019-06-02]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Pratt & Whitney Division (PW) PW4158 turbofan engines. This AD was prompted by several reports of high cycle fatigue (HCF) cracks found in the fuel nozzle supply manifold. This AD requires replacement of the affected fuel nozzles and fuel nozzle manifold supply assemblies with parts eligible for installation. This AD also requires installation of new brackets and clamps on the fuel nozzle supply manifold assemblies. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 30, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2019.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0924.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0924; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781-

238–7154; fax: 781–238–7199; email: scott.hopper@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain PW PW4158 turbofan engines. The NPRM published in the **Federal Register** on November 19, 2018 (83 FR 58199). The NPRM was prompted by several reports of HCF cracks found in the fuel nozzle supply manifold. The NPRM proposed to require replacement of the affected fuel nozzles and fuel nozzle manifold supply assemblies with parts eligible for installation. The NPRM also proposed to require installation of new brackets and clamps on the fuel nozzle supply manifold assemblies. We are issuing this AD to address the unsafe condition on these products.

Comments

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

Request To Use Overhauled Fuel Manifolds

United Parcel Service Co. (UPS) and Pratt & Whitney requested that the AD clarify that overhauled fuel manifolds that have had new tube details installed meet the intent of installing new fuel manifolds called for in Pratt & Whitney Service Bulletin (SB) PW4ENG 73–224, dated November 8, 2017. UPS and Pratt & Whitney noted that the equivalent Pratt & Whitney SB PW4G–100–73–48, Revision No. 1, dated April 24, 2018, for PW PW4000–100 engines, allows use of repaired manifolds.

We disagree because Pratt & Whitney SB PW4ENG 73–224, dated November 8, 2017, does not allow the installation of overhauled fuel manifolds with new tube details. We recommend that operators who would like to use overhauled manifolds submit an AMOC request.

Request To Clarify Applicability

SR Technics Switzerland Ltd. requested we clarify the identification of

potentially affected engines since part number (P/N) 51J228 is a sales order option and does not appear in PW service bulletins. UPS recommended that we revise the applicability to refer to “All Engines that incorporate Talon II Burner Sales Order Option P/N 51J228.” The commenters indicated that P/N 51J228 is not listed in the applicable PW parts catalogue or in a service bulletin.

We partially agree. We agree to clarify the applicability of this AD. We disagree with referring to “engines that incorporate Talon II Burner Sales Order Option P/N 51J228” as this reference is not sufficiently clear to operators. We revised the Applicability of this AD to refer to the specifically affected engine serial numbers.

Request for Previous Credit

UPS requested that the rule include a “Credits for Previous Actions” section in this AD stating that affected engines that have fully incorporated prior revisions of both Pratt & Whitney SB PW4ENG 73–223, dated February 5, 2018, and Pratt & Whitney SB PW4ENG 73–224, dated November 8, 2017, may take credit for the required actions. UPS reasoned that PW is considering publishing a revision to Pratt & Whitney SB PW4ENG 73–224 that will allow use of overhauled fuel supply manifolds.

We disagree. We cannot give credit for previous action based on service bulletins that have not been published. We did not change this AD.

Request To Revise Compliance

UPS commented that paragraph (g)(1) in the NPRM only referred to P/N 51J344. UPS noted that there are other pre-SB 73–223 part numbers, such as P/N 51J235, that may be found installed in Talon II engines. UPS suggested that we revise the compliance paragraph (g)(1) in this AD to be similar to paragraph (g)(2) of this AD—for example, “Replace the 24 fuel nozzles with part number 51J397 per Pratt & Whitney SB PW4ENG 73–223.”

We agree. Fuel nozzle designs other than P/N 51J397 are also susceptible to braze joint cracking. We revised paragraph (g)(1) of this AD based on the change suggested by the commenter.

Support for the AD

The Air Line Pilots Association International expressed support for the AD as written.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Pratt & Whitney SB PW4ENG 73–224, dated November 8, 2017. The SB describes procedures for replacing the fuel nozzle supply manifold assemblies with parts eligible for installation, and installing new brackets and clamps on the fuel nozzle supply manifolds. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We reviewed Pratt & Whitney SB PW4ENG 73–223, dated February 5, 2018. This SB describes procedures for replacing the fuel nozzles and fuel nozzle support assemblies with parts eligible for installation.

Costs of Compliance

We estimate that this AD affects 114 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace (24) fuel nozzles	48 work-hours × \$85 per hour = \$4,080	\$423,471.12	\$427,551.12	\$48,740,827.68
Replace fuel supply manifold tubes and install new clamps and brackets.	16 work-hours × \$85 per hour = \$1,360	77,158.97	78,518.97	8,951,162.58

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019-06-02 Pratt & Whitney Division:
Amendment 39-19600; Docket No. FAA-2018-0924; Product Identifier 2018-NE-34-AD.

(a) Effective Date

This AD is effective April 30, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Division PW4158 turbofan engines designated by a-3 on the Engine Data Plate and with the following engine serial numbers: 728534 to 728555; 728557 to 728585; 728587 to 728591; 728593; 728598; 729808 to 729824; or 729826 to 729864.

(d) Subject

Joint Aircraft System Component (JASC) Code 7310, Engine Fuel Distribution.

(e) Unsafe Condition

This AD was prompted by several reports of high cycle fatigue (HCF) cracks found in the fuel nozzle supply manifold tube at the braze joint interface. We are issuing this AD to prevent failure of the fuel nozzles. The unsafe condition, if not addressed, could result in engine fire, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

No later than the next engine shop visit after the effective date of this AD, do the following:

(1) Remove any of the 24 fuel nozzles, part number (P/N) 51J235 or 51J344, and replace with P/N 51J397.

(2) Replace the fuel nozzle manifold supply assemblies and install new brackets and clamps on the fuel supply manifolds in accordance with the "For Engines Installed on Aircraft" or "For Engines Not Installed on Aircraft" sections, as applicable, of the Accomplishment Instructions in Pratt & Whitney Service Bulletin (SB) PW4ENG 73-224, dated November 8, 2017.

(h) Definitions

For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

- (1) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.
- (2) Separation of engine flanges solely for the purposes of replacing the fan or propulsor without subsequent maintenance.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7154; fax: 781-238-7199; email: scott.hopper@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW4ENG 73-224, dated November 8, 2017.

(ii) [Reserved]

(3) For Pratt & Whitney service information identified in this AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; phone: 860-565-8770; fax: 860-565-4503.

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

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

Issued in Burlington, Massachusetts, on March 19, 2019.

Karen M. Grant,

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

[FR Doc. 2019-05708 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0735; Product Identifier 2018-NE-26-AD; Amendment 39-19599; AD 2019-06-01]

RIN 2120-AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018-24-01 for certain International Aero Engines (IAE) PW1133G-JM, PW1133GA-JM, PW1130G-JM, PW1127G-JM, PW1127GA-JM, PW1127G1-JM, PW1124G-JM, PW1124G1-JM, and PW1122G-JM turbofan engines. AD 2018-24-01 required removing certain low-pressure turbine (LPT) 1st- and 3rd-stage disks from service and replacing with a part eligible for installation. This AD retains the same requirements as AD 2018-24-01. This AD was prompted by the discovery of incorrect serial numbers in the identification of LPT disks in AD 2018-24-01. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2019.

We must receive any comments on this AD by May 10, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0735; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7088; fax: 781-238-7199; email: kevin.m.clark@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018-24-01, Amendment 39-19505 (84 FR 2715, February 8, 2019), (“AD 2018-24-01”), for all IAE PW1133G-JM, PW1133GA-JM, PW1130G-JM, PW1127G-JM, PW1127GA-JM, PW1127G1-JM, PW1124G-JM, PW1124G1-JM, and PW1122G-JM turbofan engines with certain LPT 1st- and 3rd-stage disks installed. AD 2018-24-01 required removing certain LPT 1st- and 3rd-stage disks from service and replacing with a part eligible for installation. AD 2018-24-01 resulted from by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. We issued AD 2018-24-01 to prevent failure of the LPT 1st- or 3rd-stage disk.

Actions Since AD 2018-24-01 Was Issued

Since we issued AD 2018-24-01, we learned of incorrect and omitted serial numbers for LPT 1st-stage and 3rd-stage disks in AD 2018-24-01. Two serial numbers, LLDLAJ4594 and LLDLAJ4595, were identified incorrectly, respectively, as LLDLAJ4494 and LLDLAJ4495 in Figure 1 to Paragraph (g) of AD 2018-24-01. In addition, one serial number, LLDLAJ6115, was included in the

NPRM but inadvertently omitted from Figure 2 to Paragraph (g) of AD 2018-24-01. We are issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires removing certain LPT 1st- and 3rd-stage disks from service and replacing with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA-2018-0735 and product identifier 2018-NE-26-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT 1st- or 3rd-stage disk.	0 work-hours × \$85 per hour = \$0	\$210,000	\$210,000	\$0

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) Amendment 39–19505 (84 FR 2715, February 8, 2019) and adding the following new AD:

2019–060–01 International Aero Engines:
Amendment 39–19599; Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD.

(a) Effective Date

This AD is effective April 10, 2019.

(b) Affected ADs

This AD replaces AD 2018–24–01, Amendment 39–19505 (84 FR 2715, February 8, 2019).

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with a low-pressure turbine (LPT) 3rd-stage disk with a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD or an LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. We are issuing this AD to prevent failure of the LPT 1st- or 3rd-stage disk. The unsafe condition, if not addressed, could result in uncontained LPT 1st- or 3rd-stage disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove from service the LPT 1st- and 3rd-stage disk within 30 days after the effective date of this AD, or as identified in paragraphs (g)(1) or (2) of this AD, whichever occurs later, and replace with a part eligible for installation.

- (1) Remove the LPT 3rd-stage disk with an S/N listed in Figure 1 to paragraph (g) of this AD at the next piece-part exposure, not to exceed 4,800 cycles since new (CSN).

BILLING CODE 4910–13–P

Figure 1 to Paragraph (g) of this AD – S/Ns of LPT 3rd-stage disk

LLDLAJ4516

LLDLAJ4498

LLDLAJ4518

LLDLAJ4499

LLDLAJ4505

LLDLAJ4511

LLDLAJ4512

LLDLAJ4484

LLDLAJ4594

LLDLAJ4595

LLDLAJ4482

LLDLAJ4500

(2) Remove the LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this

AD at the next piece-part exposure, not to exceed 2,240 CSN.

Figure 2 to Paragraph (g) of this AD – S/Ns of LPT 1st-stage disk

LLDLAJ6110

LLDLAJ6111

LLDLAJ6114

LLDLAJ6115

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781-238-7088; fax: 781-238-7199; email: *kevin.m.clark@faa.gov*.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 19, 2019.

Karen M. Grant,

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

[FR Doc. 2019-05582 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9853]

RIN 1545-BK62

Reportable Transactions Penalties Under Section 6707A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the amount of the penalty under section 6707A of the Internal Revenue Code (Code) for failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. The final regulations are necessary to clarify the amount of the penalty under section 6707A, as amended by the Small Business Jobs Act of 2010. The final regulations will affect any taxpayer who fails to properly disclose participation in a reportable transaction.

DATES: *Effective Date:* These regulations are effective on March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Michael Franklin, (202) 317-6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains final regulations amending 26 CFR part 301 under section 6707A of the Internal Revenue Code. Section 6707A was added to the Code by section 811(a) of the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418) and was amended by section 11(a)(41) of the Tax Technical Corrections Act of 2007 (Pub. L. 110-172, 121 Stat. 2473). Section 6707A imposes a penalty for failure to disclose a reportable transaction. It also imposes a penalty on certain taxpayers for failure to disclose in filings with the Securities and Exchange Commission (SEC) any requirement to pay a penalty under (1) section 6707A with respect to a listed transaction, (2) section 6662A with respect to an undisclosed reportable transaction, or (3) section 6662(h) with respect to an undisclosed reportable transaction. On September 11, 2008, temporary regulations (TD 9425) under section 6707A were published in the **Federal Register** (73 FR 52784). A notice of proposed rulemaking (REG-160868-04) cross-referencing the

temporary regulations was published in the **Federal Register** on the same day (73 FR 52805).

Section 6707A was amended in 2010 by section 2041(a) of the Small Business Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504) (the Jobs Act), which changed the amount of the penalty from a stated dollar amount to a percentage of the decrease in tax shown on the return as a result of a reportable transaction and provided maximum and minimum penalty amounts. Before the Jobs Act was enacted, the penalty was \$10,000 in the case of a natural person (\$50,000 in any other case) and, in the case of a listed transaction, \$100,000 in the case of a natural person (\$200,000 in any other case). In some cases, this structure resulted in penalties that were potentially disproportionate to the tax benefit derived from the transaction. See “Legislative Recommendations with Legislative Action: Modify Internal Revenue Code Section 6707A to Ameliorate Unconscionable Impact,” National Taxpayer Advocate 2008 Annual Report to Congress vol. 1, at 419. In response, Congress amended section 6707A(b) through the Jobs Act. See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 111th Congress (JCS-2-11), March 2011 (explaining the reasons for the change to section 6707A).

The Jobs Act amended section 6707A(b) to make the penalty 75 percent of the decrease in tax shown on the return as a result of a reportable transaction, with a minimum penalty amount of \$10,000 (\$5,000 in the case of a natural person). The maximum penalty amount is \$200,000 (\$100,000 in the case of a natural person) for failure to disclose a listed transaction, or \$50,000 (\$10,000 in the case of a natural person) for failure to disclose any other reportable transaction. The Jobs Act amendment applies to penalties assessed after December 31, 2006. See Jobs Act § 2041(b), 124 Stat. at 2560.

On September 7, 2011, final regulations (TD 9550) were published in the **Federal Register** (76 FR 55256) adopting and amending the proposed regulations published on September 11, 2008. The final regulations in TD 9550 did not provide guidance on the amount of the penalty as amended by the Jobs Act beyond reciting the language of section 6707A because the notice of proposed rulemaking on which those final regulations were based predated the Jobs Act.

On August 28, 2015, the Treasury Department and the IRS published in the **Federal Register** (80 FR 52231-01) a notice of proposed rulemaking proposing amendments to regulations

under 26 CFR part 301 to provide guidance on the amount of the penalty under section 6707A, as amended by the Jobs Act.

Summary of Comments and Explanation of Revisions

One electronic comment was submitted under the regulation number for the proposed regulations. The comment is available for public inspection at <http://www.regulations.gov> or upon request. The IRS received no requests for a public hearing, and none was held.

The comment addressed two different issues, the first being the definition of “decrease in tax” provided in § 301.6707A-1(d)(1)(i) of the proposed regulations. Section 6707A(b)(1) provides that, subject to certain minimum and maximum amounts, the amount of the penalty under subsection (a) of section 6707A with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for federal tax purposes). Section 301.6707A-1(d)(1)(i) of the proposed regulations defines a “decrease in tax” generally as the difference between the amount of tax reported on the return as filed and the amount of tax that would be reported on a hypothetical return where the taxpayer did not participate in the reportable transaction. The definition in § 301.6707A-1(d)(1)(i) also encompasses situations where a taxpayer’s participation in a reportable transaction creates a liability for a tax that would not exist absent participation in the transaction. For example, a taxpayer engaging in a listed transaction involving a Roth IRA may be subject to an excise tax on excess IRA contributions. If the taxpayer fails to report the excise tax on the taxpayer’s excess IRA contributions, this amount of tax would not appear on the return filed by the taxpayer that reflected the taxpayer’s participation in the reportable transaction. The excise tax would also not appear on a return filed by the taxpayer if the taxpayer had not engaged in the transaction, because there would be no excess contribution on which the excise tax would be imposed. Therefore, the difference between these two returns would result in no decrease in tax attributable to the abusive Roth IRA transaction. To account for this type of situation, § 301.6707A-1(d)(1)(i)(B) of the proposed regulations includes in the definition of decrease in tax “any other tax that results from participation in the

reportable transaction but was not reported on the taxpayer's return." *Example 1* in § 301.6707A-1(d)(3)(i) illustrates this rule.

The commenter noted that the proposed regulation includes tax that should have been shown on the return, but was not, in the definition of "decrease in tax" described in § 301.6707A-1(d)(1)(i)(B) of the proposed regulations. The decrease in tax described in § 301.6707A-1(d)(1)(i)(B) of the proposed regulations will only exist if the taxpayer's reporting position is invalid. If the taxpayer's reporting position were determined to be correct, there would be no additional tax resulting from the participation in the reportable transaction that the taxpayer was required to, but did not, report on the taxpayer's return. The commenter contended that including this unreported tax as part of the decrease in tax used to calculate the penalty conflicts with the common understanding that the section 6707A penalty is intended to apply even if the taxpayer's reporting position is determined to be correct. In this situation, the Service will not be able to impose the penalty without first determining the merits of the reporting position. The commenter expressed concerns about whether Congress intended for the penalty to apply in such circumstances, absent adjudication on the merits of the underlying reporting position. The commenter noted that, in contrast, § 301.6707A-1(d)(1)(i)(A) of the proposed regulations defines "decrease in tax" by comparing the amount reported on the taxpayer's return (reflecting participation in the reportable transaction) with the tax liability that would be reported on a hypothetical return that did not reflect participation in the reportable transaction. This portion of the definition is not affected by the assumption that the taxpayer's reporting position is invalid.

The definition of "decrease in tax" in § 301.6707A-1(d)(1)(i) of the proposed regulations remains the same in the final regulations. The plain language of section 6707A supports the definition of decrease in tax provided in these final regulations. As noted above, section 6707A(b)(1) provides that the amount of the section 6707A penalty "shall be 75 percent of the decrease in tax shown on the return as a result of such transaction." It is entirely consistent with this statutory language to include, when determining the "decrease in tax" upon which the amount of the penalty is calculated, other tax that would result from participation in the reportable

transaction and that was not reported on the taxpayer's return. If the taxpayer's participation in the reportable transaction resulted in a decrease in the amount of tax reported on the return, the plain language of section 6707A allows that amount to be taken into account in determining the amount of the section 6707A penalty.

The same commenter also suggested adding an additional factor to the list of factors that the IRS considers when determining whether to rescind a section 6707A penalty in § 301.6707A-1(e)(3) of the final regulations (§ 301.6707A-1(d)(3) in the previous version of these regulations). The commenter suggested adding the filing of a timely amended return that removes the tax benefits claimed with respect to the reportable transaction to that list of factors. The commenter expressed concern that taxpayers might mistakenly believe that they can remedy the failure to disclose the reportable transaction by filing an amended return that does not report the benefits of the transaction and that the filing of such amended return renders moot any obligation to disclose participation in the reportable transaction.

The final regulations do not adopt this suggestion. The section 6707A penalty applies when a taxpayer fails to report participation in a reportable transaction as required under section 6011. The filing of an amended return that does not report the benefits of the reportable transaction does not remedy the failure to which the section 6707A penalty applies, namely the failure to report participation in the reportable transaction. Furthermore, the list of factors in § 301.6707A-1(e)(3) that the IRS considers in deciding whether to rescind a section 6707A penalty is not exclusive. The IRS is not precluded from considering factors other than those listed in the regulation, including the filing of an amended return.

Although no changes were made specifically in response to public comments, some revisions were made to the proposed regulations. Section 301.6707A-1(d)(1)(ii) was revised to clarify how the penalty is calculated in situations where a transaction becomes reportable after the filing of the return or returns reflecting participation in the transaction.

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction and who is required to file a tax return must file within the time prescribed in § 1.6011-4(e) a disclosure statement in the form prescribed by § 1.6011-4(d). If a transaction becomes a listed transaction or a transaction of interest after the

filing of the return or returns reflecting a taxpayer's participation in such transaction but while the period of limitations on assessment remains open for any year in which the taxpayer participated in the transaction, § 1.6011-4(e)(2)(i) requires the taxpayer to file a single disclosure statement with respect to the taxpayer's participation in the transaction with the Office of Tax Shelter Analysis (OTSA) within 90 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. In order for a disclosure statement to be considered complete, § 1.6011-4(d) requires the disclosure statement to describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the transaction and the identity of all parties involved in the transaction.

Section 1.6011-4(e)(2)(i) requires taxpayers to file a single disclosure statement with respect to a subsequently listed transaction or transaction of interest if the period of limitations on assessment remains open with respect to any year in which the taxpayer participated in the reportable transaction. Therefore, a taxpayer that first participated in a listed transaction or transaction of interest during a year for the which the period of limitations on assessment is closed at the time the transaction becomes reportable, but that also participated in the same reportable transaction during a year for which the period of limitations on assessment remains open at the time the transaction becomes reportable, is required to describe participation in that reportable transaction during years for which the period of limitations is closed at the time the transaction becomes reportable.

In the final regulations, § 301.6707A-1(d)(1)(ii) is revised to clarify that, when a taxpayer whose participation in a subsequently identified listed transaction or transaction of interest is reflected on more than one return and when that taxpayer fails to file, as required by § 1.6011-4(a), a complete and proper disclosure statement in the time prescribed under § 1.6011-4(e)(2)(i), the amount of the penalty will be calculated by aggregating the decrease in tax shown on each return for which the period of limitations on assessment remains open at the time the transaction becomes reportable, subject to the statutory minimum and maximum penalty amounts. Decreases in tax shown on returns for years for

which the period of limitations is not open at the time the transaction becomes reportable will not be taken into account in calculating the amount of the penalty. *Example 5* in § 301.6707A–1(d)(3)(v) is revised to more clearly illustrate how the penalty is calculated in situations where a taxpayer fails to disclose participation in a subsequently identified transaction.

Section 6501, which prescribes the period of limitation for assessment of tax, does not preclude the IRS from taking into account decreases in tax shown on returns for which the period of limitations has closed when calculating the amount of the penalty. However, in the interest of providing to taxpayers the repose generally provided for by the expiration of the period of limitations on assessment, these final regulations adopt an approach wherein those amounts are not taken into account in calculating the penalty. When a transaction becomes reportable after the filing of the return or returns reflecting participation in that transaction, the obligation to file a disclosure statement does not arise until the transaction becomes a listed transaction or transaction of interest. When the transaction becomes a listed transaction or transaction of interest, the taxpayer then has 90 calendar days to file a complete and accurate disclosure statement with the OTSA. It is the failure to file this disclosure statement that gives rise to liability for a single section 6707A penalty.

The approach to calculating the penalty adopted in these final regulations is also more administrable. By including in the calculation of the penalty only decreases in tax shown on returns for which the period of limitations on assessment remains open, there is certainty about which returns need to be reviewed and which decreases in tax are taken into account in calculating the amount of the penalty. If decreases in tax reported on returns for tax years for which the period of limitations on assessment is closed were taken into account in calculating the amount of the penalty, an indefinite number of prior year returns would have to be reviewed to determine whether the return reflects participation in the reportable transaction and to correctly calculate the penalty. The approach adopted in these regulations avoids this uncertainty, providing uniformity and repose to both taxpayers and the IRS.

In addition to the changes to § 301.6707A–1(d)(1)(ii), one additional example was added to § 301.6707A–1(d)(3)(vii) of the final regulations. *Example 7* illustrates the application of

the penalty in situations where a taxpayer that fails to disclose a subsequently listed transaction files an amended return again reporting the tax benefits associated with that transaction but does not disclose participation in the transaction on the amended return as required by § 1.6011–4. Further, all examples were updated and revised for clarity with non-substantive changes.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because the final regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received on the proposed regulations.

Drafting Information

The principal author of these regulations is Michael Franklin of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6707A–1 is amended by:

- 1. Adding paragraph (b)(3).
- 2. In paragraph (c)(1), removing the language “(including an amended return or application for tentative refund)” in the fifth sentence.
- 3. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f), and (g).
- 4. Adding new paragraph (d).

■ 5. In newly designated paragraph (e), removing “(d)(3)(i)” and “(d)(3)” wherever they appear and adding “(e)(3)(i)” and “(e)(3)” in their place, respectively.

■ 6. In newly designated paragraph (e)(3)(i), removing the language “(including an amended return or application for tentative refund)” wherever it appears.

■ 7. In newly designated paragraph (f), removing “(e)(1)”, “(e)(2)”, “(e)(3)”, and “(e)(1)(i) through (e)(1)(iii)” wherever they appear and adding “(f)(1)”, “(f)(2)”, “(f)(3)”, and “(f)(1)(i) through (iii)” in their place, respectively.

■ 8. Revising newly designated paragraph (g).

The additions and revisions read as follows:

§ 301.6707A–1. Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

* * * * *

(b) * * *

(3) *Return.* For purposes of this section, the term *return* means an original return, amended return, or application for tentative refund, except where otherwise indicated. As used in examples, the term *return* means an original return, except where otherwise indicated.

* * * * *

(d) *Calculation of the penalty—(1) Decrease in tax—(i) In general.* (A) As used in this section, the phrase *decrease in tax shown on the return as a result of the transaction or the decrease that would have resulted from the transaction if it were respected for Federal tax purposes* means the sum of:

(1) The excess of the amount of the tax that would have been shown on the return if the return did not reflect the taxpayer's participation in the reportable transaction over the tax actually reported on the return reflecting participation in the reportable transaction; and

(2) Any other tax that results from participation in the reportable transaction but was not reported on the taxpayer's return.

(B) The amount of tax that would have been shown on the return if it did not reflect the taxpayer's participation in the reportable transaction includes adjustments that result mechanically from backing out the reportable transaction, such as tax items affected by an increase in adjusted gross income resulting from not participating in the transaction. The calculation of the penalty is unaffected by whether a taxpayer's tax liability is ultimately settled with the IRS for a different

amount or whether the taxpayer subsequently reports a different amount of tax on an amended return, because these amounts do not enter into the calculation of the decrease in tax shown on the return (or returns) to which the penalty relates.

(ii) *Subsequently identified transactions.* If the taxpayer fails to file, as required by § 1.6011-4(a) of this chapter, a complete and proper disclosure statement disclosing participation in a listed transaction or transaction of interest with respect to more than one return in the time prescribed under § 1.6011-4(e)(2)(i) of this chapter, the amount of the penalty will be computed by aggregating the decrease in tax shown on each return for which the period of limitations on assessment remains open.

(iii) *Penalty for failure to report to the SEC.* In the case of a penalty imposed under section 6707A(e) for failure to disclose liability for certain penalties in reports to the Securities and Exchange Commission (SEC), the amount of the penalty will be determined under section 6707A(b) and this paragraph (d), regardless of whether the penalty that the taxpayer failed to disclose is imposed under section 6707A, 6662A, or 6662(h).

(iv) *Minimum and maximum amount of the penalty.* The limitations on the minimum and maximum penalty amounts described in paragraph (a) of this section apply separately to each failure to disclose that is subject to a penalty.

(2) *No tax required to be shown on return.* For returns with respect to which disclosure is required but on which no tax is required to be shown (for example, returns of passthrough entities), the minimum penalty amount will be imposed for the failure to disclose.

(3) *Examples.* The rules in paragraphs (d)(1) and (2) of this section are illustrated by the following examples:

(i) *Example 1.* Taxpayer X, a natural person, participated in a listed transaction involving a Roth IRA and filed a return reflecting participation in the transaction. X failed to disclose participation in the listed transaction as required by the regulations under section 6011. As a result of the transaction, X was liable under section 4973 for a \$10,000 excise tax for excess contributions to X's Roth IRA. On X's return reflecting participation in the listed transaction, X correctly reported \$25,000 of income tax, none of which was attributable to the listed transaction, but failed to report the excise tax. If X had not participated in the listed transaction, the excise tax under section 4973 would not have applied and X's income tax would have remained \$25,000. There would, therefore, be no difference

between the tax on the return as filed and the tax on the return if it did not reflect participation in the transaction. The excise tax, however, is another tax that resulted from participation in the transaction but was not reported on X's return, as described in paragraph (d)(1)(i)(B) of this section.

Therefore, under paragraph (d)(1) of this section, the decrease in tax resulting from the listed transaction is \$10,000. This amount is determined by adding zero (the excess of the amount of tax that would have been shown on X's return if the return did not reflect X's participation in the transaction over the tax X actually reported on the return reflecting X's participation in the transaction) and \$10,000 (the amount of excise tax that resulted from participation in the transaction but was not reported on the return). The amount of the penalty under section 6707A is \$7,500, which amount is 75 percent of the \$10,000 decrease in tax.

(ii) *Example 2.* Taxpayer X participated in a listed transaction that resulted in a \$40,000 decrease in the tax shown on the return reflecting participation in the transaction. X failed to disclose its participation in the transaction as required by the regulations under section 6011 and is, therefore, subject to a penalty under section 6707A. After weighing litigating hazards and other costs of litigation, the IRS Office of Appeals agreed to settle X's deficiency for \$20,000. For purposes of calculating the amount of the penalty under paragraph (d)(1) of this section, the settlement does not affect the decrease in tax shown on X's return as a result of the listed transaction which remains \$40,000. The amount of X's penalty under section 6707A is \$30,000, which amount is 75 percent of the \$40,000 decrease in tax.

(iii) *Example 3.* For the 2018 tax year, Taxpayer X, a natural person, failed to disclose participation in a reportable transaction that is not a listed transaction and, therefore, is subject to a penalty under section 6707A. After offsetting gross income with the losses generated in the reportable transaction, X's return reported adjusted gross income of \$100,000. The return also reported \$12,000 of medical expenses, \$4,500 of which were deductible after applying the 7.5 percent floor in section 213(a) and (f). If X's return had not reflected participation in the reportable transaction, X's adjusted gross income would have been \$140,000 and the deductible medical expenses would be limited to \$1,500 (\$3,000 less than the deductible amount claimed). Under paragraph (d)(1) of this section, the decrease in tax shown on X's return as a result of X's participation in the reportable transaction takes into account both the tax on the additional \$40,000 in adjusted gross income had X not participated in the reportable transaction and the tax on the \$3,000 adjustment to X's deductible medical expenses caused by the increase in adjusted gross income.

(iv) *Example 4.* Taxpayer X, a natural person, timely filed X's 2019 return and reported income tax of \$40,000. X did not participate in a reportable transaction in 2019. X participated in a listed transaction in 2020, but failed to file a complete and proper disclosure statement with X's 2020 return as

required by the regulations under section 6011. As filed, the 2020 return reports that X owes no tax and has a loss of \$10,000. If the tax consequences of the listed transaction were not reflected on the 2020 return, the return would show income tax of \$15,000 and no loss. X files an amended return for the 2019 tax year on which the only amendment is to carry back the \$10,000 loss reported on the 2020 tax return to the 2019 tax year. The loss carryback reduces X's tax liability for 2019 by \$3,000 to \$37,000. X fails to file a complete and proper disclosure statement with the 2019 amended return as required by the regulations under section 6011. Two penalties under section 6707A apply: one for X's failure to disclose participation in a listed transaction reflected on the 2020 return and another for the failure to disclose participation in the same listed transaction reflected on the 2019 amended return. Under paragraph (d)(1) of this section, the decrease in tax on the 2020 return resulting from the listed transaction is \$15,000, which is the excess of the amount of tax that would have been shown on X's 2020 return if that return did not reflect X's participation in the listed transaction over the tax X actually reported on the 2020 return. The amount of the section 6707A penalty with respect to the 2020 return is \$11,250, which amount is 75 percent of the decrease in tax. Under paragraph (d)(1) of this section, the decrease in tax on the 2019 amended return that results from the listed transaction is \$3,000. This amount is computed by determining the excess of the amount of tax that would have been shown on X's 2019 amended return if that return did not reflect X's participation in the listed transaction over the tax X actually reported on the 2019 amended return reflecting the loss carryback resulting from X's participation in the listed transaction in 2020. See paragraph (c) of this section. However, because X is a natural person, and because 75 percent of the \$3,000 decrease in tax is less than \$5,000, which is the minimum penalty under paragraph (a) of this section and section 6707A(b)(3), the section 6707A penalty with respect to the failure to disclose the listed transaction with respect to the 2019 amended return is \$5,000. Accordingly, X is subject to a \$11,250 section 6707A penalty for failure to disclose participation in a listed transaction reflected on the 2020 return and a \$5,000 section 6707A penalty for failure to disclose participation in a listed transaction reflected on the 2019 amended return.

(v) *Example 5.* Taxpayer X, a corporation, timely files its 2019, 2020, and 2021 returns, each of which reflects participation in the same transaction. In 2023, the transaction becomes a listed transaction. When the transaction at issue became listed, the periods of limitations on assessment on X's 2020 and 2021 tax year were open, but the period of limitations on assessment on X's 2019 tax year was closed. Pursuant to § 1.6011-4(a) and (e)(2)(i) of this chapter, X is required to file a single disclosure statement reflecting its participation in the listed transaction 90 calendar days after the date on which the transaction becomes a listed transaction. X failed to file a disclosure

statement as required. Pursuant to paragraph (d)(1)(ii) of this section, the section 6707A penalty is computed by aggregating the decrease in tax shown on the 2020 return and the decrease in tax shown on the 2021 return. Because the period of limitations on assessment for X's 2019 tax year was closed at the time the transaction became listed, the decrease in tax shown on the 2019 return as a result of X's participation in the listed transaction is not taken into account in computing the amount of the penalty. The decreases in tax shown on the returns as a result of X's participation in the transaction are \$265,000 in tax year 2020 and \$7,000 in tax year 2021. Under paragraph (d)(1) of this section, the total decrease in tax shown is computed by adding the decrease in tax for 2020 and the decrease in tax for 2021, which is \$272,000. Seventy-five percent of that amount is \$204,000. Because X is a corporation, the maximum penalty amount is \$200,000 under paragraph (a) of this section and section 6707A(b)(2)(A). Accordingly, X is subject to a section 6707A penalty of \$200,000, rather than \$204,000.

(vi) *Example 6.* Taxpayer X, a natural person, files X's 2019 return reflecting participation in a reportable transaction that is not a listed transaction, but fails to disclose the transaction as required by the regulations under section 6011. The decrease in tax with respect to X's 2019 return as a result of participation in the reportable transaction is \$20,000. X files an amended 2019 return to include a net operating loss carried forward from a prior year, which X inadvertently failed to include when filing the original 2019 return. The amended return reflects participation in the same reportable transaction, but X again fails to disclose the transaction as required by the regulations under section 6011. The decrease in tax with respect to the amended 2019 return as a result of participation in the transaction is also \$20,000. X is subject to two separate 6707A penalties: one for the failure to disclose the reportable transaction with respect to the tax benefits from the reportable transaction reflected on the original 2019 return and one for the failure to disclose the reportable transaction with respect to the tax benefits from the reportable transaction reflected on the amended 2019 return. Seventy-five percent of the \$20,000 decrease in tax shown on the original 2019 return is \$15,000 and on the amended 2019 return is another \$15,000. However, because X is a natural person, the amount of the penalty for failure to disclose is limited to the maximum amount of \$10,000 under § 301.6707A-1(a) and section 6707A(b)(2)(B). Accordingly, the amount of the section 6707A penalty for the 2019 original return is \$10,000 and the amount of the section 6707A penalty for the 2019 amended return is also \$10,000, for a total penalty of \$20,000.

(vii) *Example 7.* Taxpayer X, a natural person, timely files X's 2019 return on April 15, 2020, reflecting participation in a transaction that was not identified as a reportable transaction when X filed the return, the only year X participated in the transaction. In early 2021, the IRS identifies the transaction as a listed transaction. X fails to disclose the listed transaction as required

by the regulations under section 6011. In late 2021, X files an amended 2019 income tax return to claim deductions that had been omitted from the originally filed 2019 return. The amended 2019 return reflects X's participation in the listed transaction. X does not disclose the listed transaction when filing the amended 2019 return. The decrease in tax resulting from X's participation in the transaction is \$100,000 with respect to the original 2019 return and \$80,000 with respect to the 2019 amended return. Pursuant to § 1.6011-4(e)(2)(i) of this chapter, X was required to file a disclosure statement reflecting X's participation in the listed transaction if the period of limitations on assessment of tax remained open for any taxable year in which the taxpayer participated in the listed transaction. When the transaction at issue became listed, the period of limitations on assessment on X's 2019 tax year was open. Pursuant to § 1.6011-4(e)(1) of this chapter, X was also required to disclose participation in the transaction when the 2019 amended return was filed because the transaction was a listed transaction at that time. X is subject to two penalties under section 6707A: one for the failure to disclose participation in a listed transaction reflected on X's original 2019 return within 90 calendar days of the date the transaction became a listed transaction as required by § 1.6011-4(e)(2)(i) of this chapter and another for the failure to disclose participation in the same listed transaction reflected on the 2019 amended return. Seventy-five percent of this decrease in tax with respect to the original 2019 return is \$75,000 (75 percent of \$100,000) and with respect to the 2019 amended return is \$60,000 (75 percent of \$80,000). Pursuant to paragraph (d)(1)(iv) of this section, because X is subject to two separate penalties, the maximum penalty amount of \$100,000 under § 301.6707A-1(a) and section 6707A(b)(2)(A) applies separately to each penalty and does not operate to reduce the amount of the X's 6707A penalties.

(viii) *Example 8.* Under § 1.6011-4 of this chapter, Partnership M is required to attach a disclosure statement to its Form 1065, U.S. Return of Partnership Income, for the 2020 taxable year. M fails to do so and is, therefore, subject to a penalty under section 6707A. No tax is required to be shown on M's Form 1065. Pursuant to § 301.6707A-1(d)(2), M is subject to the minimum section 6707A penalty of \$10,000. The partners of Partnership M may have separate disclosure obligations as required by the regulations under section 6011 and would be subject to separate section 6707A penalties if they fail to comply with the disclosure requirements.

(ix) *Example 9.* In tax year 2019, Taxpayer X participated in a listed transaction that resulted in a \$150,000 deduction. X's gross income for 2019 before the listed transaction deduction is \$100,000. X uses \$100,000 of the deduction resulting in zero tax liability for 2019. X carried over to tax year 2020 the remaining \$50,000 net operating loss that was not used in 2019. X's gross income for tax year 2020 is \$200,000 but as a result of the \$50,000 net operating loss carryover, X reports \$150,000 adjusted gross income. Pursuant to § 1.6011-4 of this chapter, X is

required to disclose participation in the listed transaction for both 2019 and 2020, but X fails to make the required disclosures and is therefore subject to the section 6707A penalty for each failure. The decrease in tax on the 2019 return is the amount of tax on \$100,000 because that is the difference between the amount of tax that would have been shown on the return if it did not reflect participation in the listed transaction and the tax actually reported. No other tax resulted from X's participation in the listed transaction. The amount of the penalty with respect to X's failure to disclose with respect to 2019 will be 75 percent of the decrease in tax. The decrease in tax on the 2020 return is the difference between the tax shown on the return as filed and the tax that would be shown if the \$50,000 net operating loss was not used, including any changes to the amount of tax that are only indirectly connected with the listed transaction. The amount of the penalty with respect to X's failure to disclose with respect to 2020 will be 75 percent of the decrease in tax, subject to the minimum and maximum penalty amount limitations.

(x) *Example 10.* In tax year 2020, Taxpayer X, a natural person, participated in a listed transaction that resulted in a \$50,000 deduction. X also has a net operating loss carryover of \$150,000 from 2019. X uses the deduction of \$50,000 and a portion of the net operating loss carryover resulting in zero tax liability for 2020. X carries over the remaining net operating loss to tax year 2021. X's gross income for 2021 is \$250,000, but as a result of the net operating loss carryover, X reports reduced adjusted gross income of \$150,000. Pursuant to § 1.6011-4 of this chapter, X is required to disclose participation in the listed transaction for both 2020 and 2021, but X fails to make the required disclosures and is subject to the section 6707A penalty for each failure. The decrease in tax on the 2020 return that results from the reportable transaction is zero. Because X has \$150,000 of a net operating loss carryover not attributable to the reportable transaction, X's tax without the benefits of the reportable transaction is the same as the tax shown on the 2020 return as filed. Because X is a natural person, the minimum penalty of \$5,000 under § 301.6707A-1(a) and section 6707A(b)(3) will apply for the failure to disclose the listed transaction with the 2020 return. The decrease in tax on the 2021 return is the difference between the tax shown on the return as filed and the tax that would be shown if X had only \$50,000 of net operating loss to carry over to 2021 (*i.e.*, if X had not offset \$50,000 of its 2020 gross income with the deduction resulting from the reportable transaction and thus had used \$100,000 of its net operating loss carryover in 2020), including any changes to the amount of tax that are only indirectly connected with the listed transaction. The amount of the penalty with respect to the disclosure relating to 2021 will be 75 percent of this decrease in tax, subject to the minimum and maximum penalty amount limitations.

(xi) *Example 11.* Taxpayer X, a public corporation required to file periodic reports under section 13 or 15(d) of the Securities

Exchange Act of 1934, timely filed its 2019 return reflecting tax benefits from a reportable transaction that is not a listed transaction and properly disclosed the transaction in accordance with the regulations under section 6011. In 2023, as a result of an examination of X's 2019 return, the IRS imposes a penalty under section 6662A with respect to the reportable transaction. The decrease in tax for purposes of paragraph (d)(1) of this section is \$190,000. As a person who is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934, X is required, pursuant to section 6707A(e), to disclose the penalty imposed under section 6662A to the Securities and Exchange Commission in 2023, which X failed to do. X's failure to disclose the section 6662A penalty is treated as a failure to disclose to which section 6707A(b) applies. Thus, X is subject to a penalty under section 6707A(e), which equals 75 percent of the decrease in tax resulting from the transaction. The decrease in tax resulting from the reportable transaction was \$190,000, 75 percent of which is \$142,500. Because X is a corporation and the transaction is not a listed transaction, the amount of the penalty is limited to \$50,000 under paragraph (a) of this section and section 6707A(b)(2)(B). Therefore, rather than \$142,500, X is subject to a \$50,000 section 6707A penalty for failure to disclose the section 6662A penalty to the SEC.

* * * * *

(g) *Applicability date.* (1) This section applies to penalties assessed after *March 26, 2019*.

(2) For penalties assessed before *March 26, 2019*, § 301.6707A-1 (as contained in 26 CFR part 1, revised April 2018) shall apply.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Editorial note: This document was received for publication by the Office of the Federal Register on March 19, 2019.

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM-2019-0079;
MMAA104000]

RIN 1010-AE03

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Civil Penalties Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the 2019 adjustment of the level of the maximum daily civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA), in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and relevant Office of Management and Budget (OMB) guidance. The 2019 adjustment multiplier of 1.02522 accounts for one year of inflation spanning the period from October 2017 through October 2018.

DATES: This rule is effective on March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Deanna Meyer-Pietruszka, Chief, Office of Policy, Regulation and Analysis, Bureau of Ocean Energy Management, at (202) 208-6352 or by email at deanna.meyer-pietruszka@boem.gov.

SUPPLEMENTARY INFORMATION:

- I. Background and Legal Authority
- II. Calculation of 2019 Adjustments
- III. Procedural Requirements
 - A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)
 - B. Regulatory Flexibility Act
 - C. Small Business Regulatory Enforcement Fairness Act
 - D. Unfunded Mandates Reform Act
 - E. Takings (E.O. 12630)
 - F. Federalism (E.O. 13132)
 - G. Civil Justice Reform (E.O. 12988)
 - H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)
 - I. Paperwork Reduction Act
 - J. National Environmental Policy Act
 - K. Effects on the Energy Supply (E.O. 13211)

I. Background and Legal Authority

The OCSLA directs the Secretary of the Interior to adjust the OCSLA maximum daily civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation (43 U.S.C. 1350(b)(1)).

The OPA does not include a maximum daily civil penalty inflation adjustment provision.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (FCPIAA of 2015) requires Federal agencies to promulgate annual inflation adjustments for civil monetary penalties. Specifically, the FCPIAA of 2015 required agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking (IFR) in 2016, and required agencies to make subsequent annual adjustments for inflation, beginning in 2017. Agencies were required to publish the first annual inflation adjustments in the **Federal Register** by no later than January 15, 2017, and must publish recurring annual inflation adjustments by no later than January 15 of each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. For this year's annual inflation adjustment, BOEM is publishing this rule after the statutory January 15 deadline because of a lapse in government funding that began on December 22, 2018, and ended on January 25, 2019.

BOEM last adjusted the levels of civil monetary penalties in BOEM regulations through a final rule, RIN 1010-AD99 [83 FR 8930], which was published on March 2, 2018.

The OMB Memorandum M-19-04 (Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf), issued December 14, 2018, explains agency statutory responsibilities for: Identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the **Federal Register**; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BOEM is promulgating this 2019 inflation adjustment for the OCSLA and OPA maximum daily civil penalties as a final rule pursuant to the provisions of the FCPIAA of 2015 and OMB guidance. A proposed rule is not required because the FCPIAA of 2015 expressly exempted the annual inflation adjustments implemented pursuant to the FCPIAA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* (the APA), allowing those adjustments to be published directly as final rules.

Specifically, the FCPIAA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIAA of 2015 at section 4(b)(2)). This interpretation of the FCPIAA of 2015 is confirmed by OMB Memorandum M–19–04 at 4 (“This means that the public procedure the APA generally requires (*i.e.*, notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.”).

II. Calculation of 2019 Adjustments

Under the FCPIAA of 2015 and the guidance provided in OMB Memorandum M–19–04, BOEM has identified applicable civil monetary penalties and calculated the necessary inflation adjustments. The previous civil penalty inflation adjustments accounted for inflation through October 2017. The required annual civil penalty inflation adjustments promulgated through this rule account for inflation through October 2018.

Annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment, and the prior year’s October CPI–U. Consistent with the guidance in OMB Memorandum M–19–04, BOEM divided the October 2018 CPI–U by the October 2017 CPI–U to calculate the multiplying factor. In this case, October 2018 CPI–U (252.885)/October 2017 CPI–U (246.663) = 1.02522. OMB Memorandum M–19–04 confirms that this is the proper multiplier. (*See* OMB Memorandum M–19–04 at 1 and n.4).

For 2019, OCSLA and the FCPIAA of 2015 require that BOEM adjust the OCSLA maximum daily civil penalty amount. To accomplish this, BOEM multiplied the existing OCSLA maximum daily civil penalty amount (\$43,576) by the multiplying factor ($\$43,576 \times 1.02522 = \$44,674.99$). The FCPIAA of 2015 requires that the resulting amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the

adjusted OCSLA maximum daily civil penalty is \$44,675.

For 2019, the FCPIAA of 2015 requires that BOEM adjust the OPA maximum daily civil penalty amount. To accomplish this, BOEM multiplied the current OPA maximum daily civil penalty amount (\$46,192) by the multiplying factor ($\$46,192 \times 1.02522 = \$47,356.96$). The FCPIAA of 2015 requires that the resulting amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum daily civil penalty is \$47,357.

The adjusted penalty levels will take effect immediately upon publication of this rule. Pursuant to the FCPIAA of 2015, the increases in the OCSLA and OPA maximum daily civil penalty amounts apply to civil penalties assessed after the date the relevant increase takes effect, even if the associated violation(s) predates such increase. Consistent with the provisions of OCSLA, OPA, and the FCPIAA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation as follows:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 550.1403	Failure to comply per day, per violation	\$43,576	1.02522	\$44,675
30 CFR 553.51(a)	Failure to comply per day, per violation	46,192	1.02522	47,357

III. Procedural Requirements

A. Regulatory Planning and Review (*E.O. 12866, 13563, and 13771*)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M–19–04 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to reduce uncertainty and to promote predictability and the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements, to the extent relevant and feasible given the limited discretion provided agencies in the FCPIAA of 2015.

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. OIRA has determined that agency regulations exclusively implementing the annual adjustment required by the FCPIAA of 2015 are not significant regulatory actions under E.O. 12866, provided they are consistent with OMB Memorandum M–19–04 (*See* OMB Memorandum M–19–04 at 3). Thus, E.O. 13771 does not apply to this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (*See* 5 U.S.C. 603(a) and 604(a)). The FCPIAA of 2015 expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIAA of

2015 at section 4(b)(2); OMB Memorandum M–19–04 at 4). Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the

information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. To the extent that State and local governments have a role in outer Continental Shelf activities, this rule will not affect that role. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the

quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, this rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). BOEM also determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a detailed statement under NEPA is not required.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Dated: February 15, 2019.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the BOEM amends title 30, chapter V, subchapter B, parts 550 and 553 of the Code of Federal Regulations as follows:

PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

- 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

- 2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$44,675 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

- 3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

- 4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$47,357 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2019–05577 Filed 3–25–19; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 718

[Docket ID: USN–2018–HQ–0020]

RIN 0703–AB07

Missing Persons Act

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the DoD regulation on the Missing Persons Act because its content is internal to DoD. The corresponding internal guidance document has been updated since this rule was last amended, and it is publicly available. The rule is outdated and unnecessary.

DATES: This rule is effective on March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Theresa Strebel at 703–693–0696.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is removing outdated internal information. The rule provides guidance to Department of the Navy entities on implementation and compliance with the Missing Persons Act. It does not add requirements beyond those established in Title 37 U.S.C. Chapter 10, “Payments to Missing Persons” (sections 551–559). The corresponding internal implementation guidance is

publicly available in DoD Issuance 2310.05, “Accounting for Missing Persons—Boards of Inquiry,” at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/231005p.pdf>.

This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review,” therefore, the requirements of E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” do not apply.

List of Subjects in 32 CFR Part 718

Military personnel.

PART 718—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 718 is removed.

Dated: March 19, 2019.

M.S. Werner,

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

[FR Doc. 2019–05722 Filed 3–25–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 728

[Docket ID: USN–2019–HQ–0002]

RIN 0703–AB09

Medical and Dental Care for Eligible Persons at Navy Department Facilities

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of the Navy (DON) regulation concerning Medical and Dental Care for Eligible Persons at Navy Department Facilities. Eligibility for healthcare in military medical treatment facilities is established in statute and other DoD regulations, therefore, this regulation is redundant and should be repealed.

DATES: This rule is effective on March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Commander Lakesha Chieves at 703–693–0238.

SUPPLEMENTARY INFORMATION: Code of Federal Regulations, title 32, subtitle A, chapter VI, subchapter C, part 728, “Medical and Dental Care for Eligible Persons at Navy Medical Department Facilities” is a Department of the Navy regulation prescribing the eligibility for medical and dental care in Navy Medical Treatment Facilities to specific

eligible persons including active duty members of the uniformed services, their family members, members and family members of the Reserve Components of the uniformed services, retirees of the uniformed services and their family members, members of Foreign Military Services and their family members, beneficiaries of other Federal Agencies, and other persons deemed eligible for care. Eligibility for care in military medical treatment facilities is established in 10 U.S.C. 1071–1110b, 32 CFR part 199, “Civilian Health and Medical Program of the Uniformed Services (CHAMPUS),” and 32 CFR part 108, “Health Care Eligibility Under the Secretarial Designee Program and Related Special Authorities.” The rule at 32 CFR part 728 is redundant and unnecessary. It has been determined that publication of this CFR part removal for public comment is impracticable and contrary to public interest since it is based upon removing redundant information.

This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review.” Therefore, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” does not apply.

List of Subjects in 32 CFR Part 728

Dental health, Government employees, Health care, Military personnel.

PART 728—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 728 is removed.

Dated: March 21, 2019.

M.S. Werner,

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

[FR Doc. 2019–05723 Filed 3–25–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 732

[Docket ID: USN–2019–HQ–0003]

RIN 0703–AB10

Non Naval Medical and Dental Care

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of the Navy (DON) regulation concerning Non Naval Medical and Dental Care. This

regulation is redundant of a Department of Defense regulation on the payment of claims to private sector health care providers for health care services furnished to active duty members of all uniformed services, and it should be repealed.

DATES: This rule is effective on March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Commander Lakesha Chieves 703–693–0238.

SUPPLEMENTARY INFORMATION: Code of Federal Regulations, title 32, subtitle A, chapter VI, subchapter C, part 732, “Non Naval Medical and Dental Care,” prescribes the responsibility, eligibility and procedures for processing civilian medical and dental claims for active duty Navy and Marine Corps service members. The processing of civilian medical and dental care claims for active duty Navy and Marine Corps service members as directed by part 732 was superseded in 1991 by 32 CFR 199.16, “Supplemental Health Care Program.” Section 199.16 provides for the payment of claims to private sector health care providers for health care services furnished to active duty members of all uniformed services. It has been determined that publication of this CFR part removal for public comment is impracticable and contrary to public interest since it is based upon removing redundant information.

This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review.” Therefore, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” does not apply.

List of Subjects in 32 CFR Part 732

Dental health, Health care, Military personnel.

PART 732—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 732 is removed.

Dated: March 21, 2019.

M.S. Werner,

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

[FR Doc. 2019–05724 Filed 3–25–19; 8:45 am]

BILLING CODE 3810–FF–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CG Docket No. 17–59; FCC 18–177]

Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission establishes a single, comprehensive database that will contain the most recent permanent disconnection date for toll free numbers and for each number allocated to or ported to each provider that receives North American Numbering Plan U.S. geographic numbers. The Commission also sets a minimum aging period of 45 days before a permanently disconnected number may be reassigned to a new subscriber and adopts a limited safe harbor from liability for any caller that relies upon inaccurate information provided by the database.

DATES:

Effective date: This rule is effective March 26, 2019.

Compliance date: Compliance will not be required for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) and (2) until the Commission publishes documents in the **Federal Register** announcing the compliance dates.

FOR FURTHER INFORMATION CONTACT: Josh Zeldis, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418–0715, email: Josh.Zeldis@fcc.gov.

SUPPLEMENTARY INFORMATION:

Compliance

The amendments of the Commission's rules as set forth in this document are effective 30 days after publication of a document in the **Federal Register** announcing approval by the Office of Management and Budget (OMB). Compliance will not be required for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) until after approval by OMB of information collection requirements contained in §§ 52.15(f)(1)(ii)(8) and 64.1200(l)(1). The compliance date for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) will be specified in a document published in the **Federal Register**. Compliance will not be required for § 64.1200(l)(2) until after approval by OMB and the reassigned numbers database administrator (Administrator) is ready to begin accepting reports of the data collected in

accordance with § 64.1200(l)(1). The Commission will publish another document in the **Federal Register** announcing the compliance date for the requirements contained in § 64.1200(l)(2).

This is a summary of the Commission's *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order (Order), document FCC 18–177, adopted on December 12, 2018, and released on December 13, 2018, in CG Docket No. 17–59. The Commission previously sought comment on these issues in *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking (Second Further Notice), published at 83 FR 17631, April 23, 2018. The full text of the Order is available for public inspection and copying via ECFS and during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It and any subsequently filed documents may also be found by searching ECFS at <http://apps.fcc.gov/ecfs/> (insert CG Docket No. 17–59 into the proceeding block). 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 CGB at (202) 418–0530 (voice), (202) 418–0432 (TTY) or (844) 432–2275 (videophone).

Congressional Review Act

The Commission sent a copy of the Order to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

The Order contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 18–177 as required by the Paperwork Reduction Act PRA of 1995, Public Law 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.”

Synopsis

I. Second Report and Order

1. In the Order, the Commission takes another action to curb unwanted telephone calls by addressing calls to reassigned phone numbers. The problem occurs when a caller tries to reach a consumer who expects a call but, unbeknownst to the caller, has disconnected the number. That number is often reassigned to a new consumer, who then receives an unwanted call meant for the prior consumer—and all too often multiple unwanted calls when, for example, the consumer misses the call or chooses to not to answer it. As a result, the previous consumer is deprived of expected calls. In addition, unwanted calls reduce callers' operational efficiency and effectiveness, while subjecting them to potential liability for alleged violations of the Telephone Consumer Protection Act (TCPA).

2. Today the Commission addresses this problem by establishing a single, comprehensive database that will contain reassigned number information from each provider that obtains North American Numbering Plan (NANP) U.S. geographic numbers. It also will include toll free numbers. The database will enable any caller to verify whether a telephone number has been reassigned before calling that number.

A. Aging Period

3. The Commission establishes a minimum aging period of 45 days for all numbers. The Commission concludes that 45 days is an appropriate aging period because the Commission allows 31 days to ensure each month's permanent disconnects are in the database before a number is reassigned and an additional two-week buffer to ensure consumers are fully protected.

B. Database Information, Access, and Use

4. The Commission finds that the database needs only the date of the most recent permanent disconnection of a particular number in order to enable a caller to determine whether that number has been permanently disconnected since a date provided by the caller. All legitimate callers should have the telephone number associated with the consumer they are attempting to reach and either the date they contacted that consumer or the date on which the caller could be confident that the consumer could still be reached at that number. The Commission believes that this minimal amount of information strikes the correct balance between not overly burdening reporting providers

while still offering callers the necessary functionality.

5. When a caller queries the database using a U.S. NANP number and a date, the database must provide a response of “yes”, “no”, or “no data” to explain whether the number has been reassigned (or more accurately, permanently disconnected) since the date provided. The date may be any past date on which the caller reasonably is certain that the consumer the caller intends to reach could in fact be reached at that number. For example, a caller might select the date on which it last spoke to the consumer at that number or the date the consumer last updated his contact information.

6. The Commission concludes, consistent with its existing number use reporting requirements, that the obligation to provide this information will be on all reporting carriers as defined in its numbering rules, which include wireless, wireline, and interconnected VoIP providers that obtain numbers from the North American Numbering Plan Administrator (NANPA). The data must be comprehensive because any exclusions will leave both callers and consumers vulnerable to calls misdirected to reassigned numbers. The mandatory reporting is necessary because the voluntary reporting alternative would yield data no more comprehensive than existing resources because not enough providers would voluntarily report.

7. The Commission requires reporting carriers as defined in § 52.15(f)(2) of its rules, including those providers that receive their numbering resources indirectly, to provide to the database information about number disconnections. The Commission concludes, however, that these providers should be able to delegate the task of reporting to the provider that receives the numbering resources directly from the NANPA or Pooling Administrator.

8. The Commission also includes toll free numbers in the reassigned numbers database. Calls to reassigned toll free numbers pose a problem to callers who waste time calling an unintended recipient and recipients who are responsible for paying the toll charge.

9. The obligation to report the permanent disconnect status of toll free numbers will be on the Toll Free Numbering Administrator. Toll free numbers are administered separately from non-toll-free numbers by the Toll Free Numbering Administrator. The Toll Free Numbering Administrator assigns toll free numbers to Responsible Organizations and, unlike the NANPA

in relation to non-toll-free numbers, is uniquely positioned to have real-time visibility into each toll free number's disconnection status. The Commission directs the Toll Free Numbering Administrator to revise its Service Management System tariff as appropriate to embody this responsibility of the Toll Free Numbering Administrator to report the disconnect status of toll free numbers to the reassigned numbers database, as set forth herein.

10. The Commission takes three steps to ensure that the data contained in the Reassigned Numbers Database are used appropriately and accessible to the widest possible array of users. First, the Commission follows the practice of data minimization—the database will not contain information about subscribers other than the most recent date of permanent disconnections. Second, the Commission limits the data available to any individual caller to a “yes”, “no”, or “no data” in response to a particular query. And third, the Commission requires callers to certify the purpose for which they are using the database.

11. The Commission believes that establishing a database that returns only a “yes”, “no”, or “no data” response to queries best protects consumer privacy and providers' commercially sensitive information because callers will not have access to the underlying data.

12. In addition, the database will be available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Administrator will obtain this certification from each new user during the enrollment process and before allowing a new user to access the database.

13. Finally, the Commission takes steps to promote the accessibility of the database to the widest array of possible users. Recognizing that callers of all sizes and levels of sophistication may choose to use the database, the Commission requires the database to offer the ability to process low-volume queries (e.g., via a website interface), as well as to support high-volume queries (e.g., via batch process and/or standardized application programming interfaces or other protocols). In addition, some callers might use a third-party contractor to scrub their calling lists or to provide the capability to place autodialed or prerecorded or artificial voice calls. It must be possible for these

third-party contractors to use it as the agent of their client callers.

C. Database Administration

14. The Commission agrees with the vast majority of commenters that a single, centralized database is the preferable option. Keeping administration of the database under the Commission's direct oversight enables the Commission to better monitor operations and address any future issues.

15. The Commission's approach has the universal benefit of reducing transaction costs by providing a single point of contact both for providers to report reassigned number information and for callers to query that information. Under this approach, providers will avoid the costs of having to enter arrangements with multiple data aggregators and of establishing mechanisms for transmitting that data to each aggregator, which might have differing technical needs.

16. The Commission concludes that it is in the public interest for the reassigned numbers database to be administered by an independent third party administrator chosen under a competitive bidding process. As the Commission stated when it previously declined to act as the NANPA, no government agency has the resources to perform both regulatory and administrative functions regarding numbering resources effectively. In contrast, the Administrator, like the NANPA, will be well situated to administer a reassigned numbers database because it will be an independent, non-governmental entity that must meet strict competitive neutrality requirements.

17. The Commission may be able to achieve operational and cost efficiencies by merging the administration of the reassigned numbers database with the already consolidated NANPA and Pooling Administrator functions under a single contract and a single administrator. The current NANPA meets the Commission's selection requirements as it is independent and was selected previously pursuant to a competitive bidding process. The Commission expects that leveraging the existing reporting and administration mechanisms between providers and the numbering administrators will result in only a small, incremental burden resulting from reporting to the Administrator the date of the most recent permanent disconnection for each number. The Commission will therefore seek to procure a contract that consolidates the Administrator's functions with the present NANPA and

Pooling Administrator functions as soon as reasonably practicable.

18. The Commission requires each provider to report to the Administrator for inclusion in the database the date of the most recent permanent disconnection for each number allocated to or ported to the provider. This is all the data that is necessary for the Administrator to be able to provide a response of “yes”, “no”, or “no data” to queries of whether a number has been permanently disconnected since a date chosen by the caller making the query.

19. Using the date of permanent disconnection in this context reduces the potential that callers will needlessly expend resources attempting to call the number, and the lead time between disconnection and reassignment reduces the likelihood that the consumer to whom the number is reassigned will receive calls intended for the prior consumer. It also minimizes the amount of information that providers must report, minimizes the complexity and size of the database, minimizes the types of inquiries the Administrator must facilitate, and minimizes the volume of data that must be supplied in response to queries.

20. Definition of Permanent Disconnection. For this purpose, the Commission defines “permanent disconnection” as occurring when a subscriber permanently has relinquished a number, or the provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber for active service in the service provider’s records. Permanently disconnected numbers therefore do not include instances where the phone number is still associated with the subscriber, such as when a subscriber’s phone service has been disconnected temporarily for non-payment of a bill or when a consumer ports a number to another provider. A ported number remains assigned to and associated with the same consumer even though a different provider serves the consumer after the number is ported.

21. The Commission requires providers to report data to the Administrator on the 15th day of each month. The Commission believes that monthly reporting properly balances the burden placed on providers with the need for callers to obtain timely information. Moreover, the Commission concludes that more frequent reporting is unnecessary because the Commission also establishes a minimum aging period of 45 days, which will ensure that the database reflects current permanent disconnection information.

22. The Commission requires reporting providers to keep accurate and complete records associated with the permanent disconnections of their subscribers on a going-forward basis as soon as this information collection becomes effective, regardless of when the reassigned numbers database is launched. Requiring this recordkeeping before the reassigned numbers database is launched will ensure that reporting providers are appropriately tracking and have available the information they will need to update the database once it has launched, as well as a set of initial data spanning some period of time to make it more useful from launch.

23. In order to ease the burden on small providers, the Commission will permit six additional months for them to begin maintaining and reporting data to the Administrator. A limited extension of time is appropriate for these providers because they have limited staffing resources and may require additional time to make any necessary system changes to track and report permanent disconnections. The Commission directs CGB to separately announce the effective dates for smaller reporting providers when it announces the effective dates for larger reporting providers.

24. The Commission sets the threshold for determining which providers qualify for the six-month delay as those providers with 100,000 or fewer domestic retail subscriber lines as reported on their most recent Forms 477, aggregated over all the providers’ affiliates. The Commission has used this threshold with regard to other recordkeeping, retention, and reporting requirements, including in the Rural Call Completion Order.

25. The Commission declines, however, to further limit the reporting requirement for small providers, either by eliminating the obligation or by requiring less frequent reporting than larger providers. All providers, including small providers, are already required to report number usage information to the NANPA, albeit on a less frequent basis. Regardless of the size of the provider, the burden of compiling and reporting the date of permanent disconnection for NANP numbers each month is incremental and small compared to their overall reporting requirements. The Commission does not believe that this incremental burden is so significant as to outweigh the need for accurate and comprehensive data, nor does the Commission believe that the monthly reporting is overly onerous, as it is not likely to require small providers to implement new billing systems or

otherwise to incur substantial additional costs.

D. Costs and Cost Recovery

26. The Commission believes that, over the long term, callers should pay for the database. Thus, the Administrator’s costs to operate the database following its establishment will be recovered through usage charges that the Administrator will collect from callers that choose to use the database. This is consistent with the manner in which the Toll Free Numbering Administrator recovers its costs. Like the Responsible Organizations that benefit directly from the toll free numbers database, callers that choose to use the reassigned numbers database benefit directly by reducing their potential liability for unlawful calls to reassigned telephone numbers and reducing operational costs with more efficient calling. Also, like Responsible Organizations, callers that use the database are a clearly identifiable user group from which the Administrator can assess usage charges and that in turn can spread those costs across their customer bases. In contrast, costs for more generalized number administration performed by NANPA cannot be directly associated with any particular user group that could be billed for those costs and therefore are billed to providers that in turn recover those costs through charges for the services they provide. The Commission therefore concludes that it is most economically efficient and rational for the Administrator to recover reassigned numbers database costs from callers that choose to use the database.

27. The costs to establish the database and create the query functionality will be recovered using the same type of mechanism that is currently used to recover the NANPA’s costs. Thus, database creation costs will be included along with the other numbering administration costs the Billing and Collection Agent bills to and collects from providers. The Commission adopts this approach to establish the database as quickly as possible using the most practical means of funding considering that it is not possible to recover these costs through database usage charges before the database is created.

28. The Commission declines to seek Congressional funding for the database. Seeking an appropriation is unnecessary because the Commission already has authority to create the database. Further, seeking an appropriation would take additional time and therefore would delay launch of the database to the detriment of consumers and callers alike.

29. Just as providers recover other numbering administration costs, providers will be able fully to recover the costs they pay for creation of the database and query functionality, but no more. Because providers have no direct means of recovering these costs from callers that use the database, the Commission therefore will require the Administrator to set usage charges at a level designed to recover current operating costs and, over time, the database creation costs paid by providers.

30. The Commission agrees with commenters asserting that providers' internal costs of tracking and reporting permanent disconnection dates to the Administrator will be routine—and minimal—operational expenses similar to those expenses providers already incur to report other number usage data. In addition, providers have no means of recovering these costs directly from callers that choose to use the database and, because these are costs internal to providers, they cannot be recovered through the offset mechanism that enables them to recover the database creation costs they pay. Accordingly, the Commission anticipates that providers will recover these costs in their existing fees and charges.

31. The Toll Free Numbering Administrator similarly lacks a means to directly bill callers for its internal reporting costs. Therefore, it may recover these costs in the same manner as other costs of toll free number administration.

E. Safe Harbor

32. The Commission sought comment in the *Second Further Notice* on whether to adopt a safe harbor from TCPA liability for those callers that choose to use a reassigned numbers database. It adopts such a safe harbor for callers that rely on the database to learn if a number has been reassigned.

33. Nearly all commenters argue that if a reassigned numbers database is implemented, callers that make use of the database should not be subject to liability if the database reports that a number has not been reassigned and nevertheless it has been, and so a caller inadvertently calls a new consumer. The Commission agrees with consumer groups that this safe harbor should not be broadly applied to all calls made by a caller who uses the database without regard to whether the caller reasonably relied on the database when making a particular call. Indeed, the record reflects concerns about good-faith callers being subject to liability for TCPA violations, a threat that can cause callers to be overly cautious and stop

making wanted, lawful calls out of concern over potential liability for calling a reassigned number. The Commission share these concerns. And it finds that a safe harbor will incent greater usage, thereby further protecting more consumers from unwanted calls.

34. Once the database becomes operational, callers that wish to avail themselves of the safe harbor must demonstrate that they appropriately checked the most recent update of the database and the database reported “No” when given either the date they contacted that consumer or the date on which the caller could be confident that the consumer could still be reached at that number. Callers bear the burden of proof and persuasion to show that they checked the database before making a call.

35. The Commission disagrees with commenters seeking a more expansive safe harbor. For example, it declines to expand the period of time between checking the database and making a call beyond the most recent update to the database. This time period properly balances the burden placed on callers with the privacy interests of consumers. Moreover, by setting the minimum aging period at 45 days above, the Commission ensures that a caller that accesses the most recent update to the database will not inadvertently call a reassigned number unless the database is in error.

36. The Commission also declines to extend the safe harbor to other commercial databases. The record shows that such databases collect different information over a less-than-comprehensive set of consumers, and so the Commission is not in a position to assess whether any such database would merit a safe harbor.

37. Finally, the Commission disagrees with the one commenter who contends that the Commission lacks the statutory authority to adopt a safe harbor. First, it agrees with commenters that section 227 of the Communications Act of 1934 (the Act) supplies the Commission the authority to establish a safe harbor. Second, it notes that the vast majority of commenters support a safe harbor and yet only one party states the Commission lacks the authority to establish one. Further, the Commission notes that the court that considered its previous safe harbor, the D.C. Circuit in its *ACA International* decision, found the Commission's previous one-call safe harbor arbitrary, but did not question the Commission's authority to adopt a safe harbor. Indeed, the court favorably noted the Commission's steps to establishing a reassigned numbers database and the Commission's

consideration to adopt a safe harbor for callers that check the database as, among other things, consistent with the Commission's past practice of taking a “reasonable reliance” approach when interpreting the TCPA, and by extension, expressing no concern about the Commission interpreting the Act to not demand the impossible of callers. Further, as with the safe harbor afforded in the number portability context, the safe harbor here is not an “exemption” from the TCPA and Commission's rules, but rather a means to come into compliance. Otherwise, callers would be required to do the impossible: Identify inaccurate information in an otherwise comprehensive and timely reassigned numbers database.

F. Technical and Operational Issues

38. Commenters assert that the creation of a reassigned numbers database involves technical and operational requirements that could benefit from advice by the North American Numbering Council. The Commission agrees. It believes the Council is especially well-situated to handle matters related to this aspect of number administration because of its prior experience and collective expertise advising the Commission, among other things, on administration of number portability data and numbering administration procedures and systems. The Commission also believes that the Council can address and advise on issues and considerations related to the Administrator collecting fees from database users, the billing and collection from service providers to be administered by the Billing and Collection Agent, and interaction and coordination necessary and advisable between the Administrator and the Billing and Collection Agent in performing these roles. The Commission directs the Council to assess and address technical and operational issues consistent with the discussion below and, within six months, to report its recommendations on all of these issues to the Commission.

39. The Council, working through its Numbering Administration Oversight Working Group (Oversight Working Group), is to develop a Technical Requirements Document for the reassigned numbers database for review by the Commission. That Technical Requirements Document must contain a single, unified set of functional and interface requirements for technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and

other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service provider's reporting and accounting. In reaching its recommendations, the Council should consider the most cost-effective way of administering the database, with the goal of minimizing costs and burdens for all users and service providers, while ensuring that it will fully serve the intended purpose. The Commission also directs the Council, through the Oversight Working Group, to provide guidance on any new or modified requirements for the Billing & Collection Agent contract that may be advisable or necessary with the implementation and operation of this database.

40. The Commission will refer to the Council questions of how the fee structure should be designed and the initial amount of fees. Specifically, the Council, through its Oversight Working Group, is to consider technical issues surrounding how the Administrator can collect fees from callers that use the database. How this can be best achieved will depend in part, the Commission believes, on the user interface, the fee structure, the Administrator's costs to operate the database, and the amount of the fees necessary to enable providers to recover their costs of reassigned numbers database costs they pay to the Administrator. Therefore, the Council is to consider how to structure fees and the amount of such fees. Given the success of the National Do-Not-Call Registry and support in the record for using its fee structure as a model, the Council is to consider using that or a similar fee or subscription structure. The Council is also to consider using a per-query fee structure, which may be better suited to the manner in which this database will accept and respond to queries about individual numbers and may also be more appropriate for small-volume callers. The Commission does not, however, now require use of any particular fee structure.

41. The Council will, within six months from the release of the *Order*, issue its recommendations for implementing and operating the reassigned numbers database, including a Technical Requirements Document, and recommended fee structure, and fee amounts. The Council will meet to discuss these issues and vote on whether to approve the recommendations of its Oversight

Working Group, subject to any amendments the Council may consider appropriate. The Commission directs the Wireline Competition Bureau (WCB) in coordination with CGB to seek public comment on the Technical Requirements Document. The Commission expects the Council's guidance, as well as any relevant comments submitted by interested parties, will be incorporated into any contracting decisions.

G. Costs and Benefits

42. The Commission concludes that the benefits of this database outweigh the costs imposed.

43. A comprehensive database has not been created in the absence of Commission action. Until now, the Commission's rules have not required providers to report data to this extent and frequency about disconnections or reassignments, or otherwise to make this data available. There is no comprehensive solution at present and it is evident that the marketplace is highly unlikely to create one on its own. Moreover, no provider is capable of offering a comprehensive resource because each provider has access only to its own reassigned numbers data. Similarly, the Commission does not anticipate that data aggregators will provide an equivalent resource because doing so would require each aggregator to contract with every provider to obtain comprehensive data. The transaction costs of negotiating and administering thousands of bilateral contracts, and of incenting the providers to provide such data voluntarily, would be prohibitive. Further, because providers do not all keep records in the same manner there is no certainty that the technical arrangements necessary to obtain the data would be uniform across all providers or that the data could be obtained within the same timeframes from all providers. If updates were made at different times, callers would be forced to submit queries before each call, which greatly increases transaction costs compared to the monthly checks enabled by this database.

44. The broad support among callers and consumer groups representing the interests of called parties—the two groups that ultimately will pay for this database and enjoy its benefits—therefore amply demonstrates that the benefits outweigh the costs. The Commission finds that both of these groups are rational economic actors that have estimated costs and benefits in deciding to support this database.

G. Legal Authority

45. As the Commission recently has with regard to other aspects of number administration, it finds that sections 251(e) and 201 of the Act provide ample legal authority for the requirements it adopts today. Section 251(e) of the Act gives the Commission, “authority to set policy with respect to all facets of numbering administration in the United States.” Section 201 of the Act authorizes the Commission to ensure that interstate rates are just and reasonable and to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.”

46. Section 251(e)(1) of the Act plainly gives the Commission authority to designate administrators for purposes of numbering administration. Databases long have been a tool used in numbering administration. Congress in enacting the Act and the Commission in various proceedings have recognized that fair and impartial access to numbering resources is critical because “telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.” The purpose of telephone numbers is to enable callers to place calls to the person they wish to reach. These requirements promote that purpose.

47. Certain aspects of numbering administration long have been conducted by carriers themselves as part of the services they offer or provided on their behalf by the various numbering administrators, or both. For example, carriers and their numbering-related systems play a substantial role in local number porting in conjunction with the central role of the Local Number Portability Administrator and its NPAC system, and, in toll free call numbering, some carriers operate their own Service Control Point databases (updated periodically with data from a database operated by the Toll Free Number Administrator) for servicing real-time per-call toll free call routing queries from originating carriers. The Commission similarly finds it is just and reasonable, in accordance with section 201 of the Act, for the Administrator to collect fees for using the database.

Final Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice*. The Commission sought written public comment on the proposals in the *Second Further Notice*, including

comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Proposed Rules

49. In the *Order*, the Commission establishes a single, comprehensive database that will contain reassigned number information about toll free numbers and from each voice provider that obtains North American Numbering Plan (NANP) U.S. geographic numbers. It also will include toll free numbers. The Commission's approach solves a longstanding problem for consumers and callers alike, and does so in a way that minimizes burdens on voice providers and callers.

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

50. In the *Second Further Notice*, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. It received one comment directly addressing the IRFA from NTCA. NTCA argues that the IRFA was deficient because the measures on which the Commission sought comment were vague and lacked specificity.

51. The Commission also received several comments addressing small business concerns. One commenter requested that small providers be excluded from any mandatory reporting requirement. In addition, it received a number of comments from small business callers that argued that access to reassigned numbers database should be affordable. None of the other commenters identified any areas where small businesses would incur a particular hardship in complying with the rules.

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

52. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments in response to the proposed rules in this proceeding.

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

53. The recovery of costs by reporting carriers from callers that use the reassigned numbers database apply to a wide range of entities, including potentially all entities that use the telephone to advertise. Thus, it expects that the costs associated with the voluntary usage of the reassigned

numbers database could have a significant economic impact on a substantial number of small entities. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected.

54. In 2013, there were approximately 28.8 million small business firms in the United States, according to SBA data. Determining a precise number of small entities that would be subject to fees to use the reassigned numbers database is not readily feasible. A list of the types of such small entities affected includes: Wired telecommunications carriers, local exchange carriers, incumbent local exchange carriers, competitive local exchange carriers, shared-tenant service providers, interexchange carriers, cable system operators, other toll carriers, wireless telecommunications carriers (except satellite), satellite telecommunications providers, all other telecommunications, toll resellers, and local resellers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

55. This *Order* adopts rules to require the Toll Free Numbering Administrator and all reporting carriers as defined in the Commission's numbering rules, to report information on a monthly basis to a database whereby a caller can determine whether a number has been permanently disconnected since a date provided by the caller. With the exception of delayed implementation for reporting carriers with 100,000 or fewer lines, these changes affect small and large companies equally, and apply equally to all of the classes of regulated entities identified above. The database will be available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Administrator will obtain this certification from each new user during the enrollment process and before allowing a new user to access the database.

56. The *Order* modifies §§ 52.15(f)(1)(ii) and 52.103(d) of the Commission's rules to establish a minimum aging period of 45 days for all aging numbers. Thus, neither a toll free number nor a U.S. NANP geographic number may be reassigned until at least 45 days after the date it was permanently disconnected.

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

57. The Commission will permit providers with 100,000 or fewer subscriber lines as reported on their most recent Forms 477, aggregated over all the providers' affiliates, six additional months to begin maintaining and reporting data to the Administrator. The Commission directs the CGB to separately announce the effective dates for smaller reporting providers when it announces the effective dates for larger reporting providers.

58. The Commission requires providers to report to the Administrator data on the 15th day of each month. It believes that monthly reporting properly balances the burden placed on providers with the need for callers to obtain timely information. The Commission concluded that alternatives, such as requiring real-time reporting, could impose disproportionate costs on small businesses and could be technically difficult to accomplish.

59. The Commission agrees with commenters in the proceeding that access to the reassigned numbers database should be affordable, and has structured the database accordingly. The information collected is minimal: A telephone number and the most recent permanent disconnection date. This reduces the cost of the database by minimizing the complexity and size of the database, minimizing the types of inquiries the Administrator must facilitate, and minimizing the volume of data that must be supplied in response to queries.

60. The Commission agrees with commenters that a safe harbor will incent greater usage, thereby further protecting more consumers from unwanted calls. One alternative the Commission considered was not to adopt a safe harbor. That alternative could make compliance with the TCPA's prohibition almost impossible for small businesses. It also considered, but rejected, a more expansive safe harbor because it believes requiring callers to access the most recent update to the database prior to make a call properly balances the burden placed on callers with the privacy interests of consumers. Finally, the Commission declined to extend the safe harbor to other commercial databases.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Rules

61. None.

Ordering Clauses

Pursuant to the authority contained in sections 4(i)–(j), 201(b), 227, and 251(e) of the Act, as amended, 47 U.S.C. 154(i)–(j), 201(b), 227, 251(e), that the *Order is adopted* and that Parts 52.15, 52.103, and 64.1200 of the Commission's rules, 47 CFR 52.15, 52.103, 64.1200, are amended. The North American Numbering Council shall, by June 13, 2019, address in a report to the Commission the technical and operational issues consistent with the *Order*, and that CGB, in conjunction with WCB, shall coordinate with the Council on those issues to ensure that they are addressed fully and timely.

Lists of Subjects

47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 52 and 64 as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

■ 2. Amend § 52.15 by revising paragraph (f)(1)(ii) and adding paragraph (f)(8) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(f) * * *

(1) * * *

(ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no less than 45 days and no more than 90 days. Numbers previously assigned to business customers may be aged for no less than 45 days and no more than 365 days.

* * * * *

(8) Reports of Permanently Disconnected Numbers—Reporting

carriers must report information regarding NANP numbers in accordance with § 64.1200(l) of this title.

* * * * *

■ 3. Amend § 52.103 by revising paragraph (d) to read as follows:

§ 52.103 Lag times.

* * * * *

(d) *Disconnect Status.* Toll free numbers must remain in disconnect status or a combination of disconnect and transitional status for no less than 45 days and for no more than 4 months. No requests for extension of the 4-month disconnect or disconnect and transitional interval will be granted. All toll free numbers in disconnect or transitional status must go directly into the spare or unavailable category upon expiration of the 4-month disconnect or transitional interval. A Responsible Organization may not retrieve a toll free number from disconnect or transitional status and return that number directly to working status at the expiration of the 4-month disconnect or transitional interval.

* * * * *

PART 64—MISCELLANEOUS RULE RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 5. Amend § 64.1200 by adding paragraphs (l) and (m) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(l) A reporting carrier subject to § 52.15(f) of this title shall:

(1) Maintain records of the most recent date each North American Numbering Plan (NANP) telephone number allocated or ported to the reporting carrier was permanently disconnected.

(2) Beginning on the 15th day of the month after the Consumer and Governmental Affairs Bureau announces that the Administrator is ready to begin accepting these reports and on the 15th day of each month thereafter, report to the Administrator the most recent date each NANP telephone number allocated to or ported to it was permanently disconnected.

(3) For purposes of this paragraph (l), a NANP telephone number has been permanently disconnected when a subscriber permanently has relinquished the number, or the

provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber. A NANP telephone number that is ported to another provider is not permanently disconnected.

(4) Reporting carriers serving 100,000 or fewer domestic retail subscriber lines as reported on their most recent Forms 477, aggregated over all the providers' affiliates, must begin keeping the records required by paragraph (l)(1) of this section six months after the effective date for large providers and must begin filing the reports required by paragraph (l)(2) of this section no later than the 15th day of the month that is six months after the date announced by the Consumer and Governmental Affairs Bureau pursuant to paragraph (l)(2).

(m) A person will not be liable for violating the prohibitions in paragraph (a)(1), (2), or (3) of this section by making a call to a number for which the person previously had obtained prior express consent of the called party as required in paragraph (a)(1), (2), or (3) but at the time of the call, the number is not assigned to the subscriber to whom it was assigned at the time such prior express consent was obtained if the person, bearing the burden of proof and persuasion, demonstrates that:

(1) The person, based upon the most recent numbering information reported to the Administrator pursuant to paragraph (l) of this section, by querying the database operated by the Administrator and receiving a response of “no”, has verified that the number has not been permanently disconnected since the date prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section; and

(2) The person's call to the number was the result of the database erroneously returning a response of “no” to the person's query consisting of the number for which prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section and the date on which such prior express consent was obtained.

[FR Doc. 2019–05620 Filed 3–25–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MB Docket Nos. 18–214, GN Docket No. 12–268; FCC 19–21]

LPTV, TV Translator, and FM Broadcast Station Reimbursement

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to implement Congress's directive in the 2018 Reimbursement Expansion Act (REA) that the Commission reimburse certain Low Power Television and television translator stations and FM broadcast stations, for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. This document adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

DATES: *Effective date:* These rules are effective April 25, 2019.

Compliance date: Compliance will not be required for § 73.3701 until the Commission publishes a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: Maria Mullarkey, *Maria.Mullarkey@fcc.gov* of the Media Bureau, (202) 418–1067. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*), MB Docket Nos. 18–214; GN Docket No. 12–268; FCC 19–21, adopted on March 15, 2019 and released March 15, 2019. The full text is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats

(computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Compliance date: The amendments of the Commission's rules as set forth in the Final rules section are effective thirty (30) days after publication in the **Federal Register**. Section 73.3701 contains new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Compliance will not be required for § 73.3701 until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, *see* 44 U.S.C. 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act: The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In this *R&O*, the Federal Communications Commission (Commission) adopted rules to implement Congress's directive in the 2018 Reimbursement Expansion Act (REA) that the Commission reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund

(Reimbursement Fund) and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. This *R&O* adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

Amounts Available for Reimbursement

2. The Commission concludes that the REA permits it to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs. The Commission also concludes that it will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM stations. Specifically, the Commission will use the \$400 million appropriated for fiscal year 2019 first to reimburse full power, Class A, and MVPD entities for any expenses eligible for reimbursement that have not already been reimbursed before using any remaining fiscal year 2019 funds to reimburse LPTV/translator and FM stations for eligible expenses not already reimbursed above the amounts allocated for those purposes by the REA for fiscal year 2018. All commenters that addressed the issue of the Commission's discretion to use fiscal year 2019 funds agreed that the statute permits the funds to be used to reimburse any eligible recipient of reimbursement funds. No commenter argued that the \$400 million for fiscal year 2019 is only available to reimburse eligible full power and Class A stations and MVPDs.

Statutory Interpretation

3. The REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019. Section 511(j)(2) of the REA discusses the "availability of funds" and provides that, if the Commission makes the required certification, "amounts made available to the TV Broadcaster Relocation Fund by [Section 511(j)(1)] shall be available to the Commission to make" certain specified payments. In particular, Section 511(j)(2)(A) states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments required by the Spectrum Act and the REA, including "not more than" \$350 million to reimburse full power and Class A stations and MVPDs from

fiscal year 2018 funds, “not more than” \$150 million to reimburse LPTV and TV translator stations from fiscal year 2018 funds, and “not more than” \$50 million to reimburse FM stations from fiscal year 2018 funds. It also states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments “solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum,” including \$50 million from the funds available for fiscal year 2018. The REA contains no such express delineation of how the funds available for fiscal year 2019 are to be allocated. The Commission sought comment in the Notice of Proposed Rulemaking (*NPRM*) (83 FR 43613) on whether the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 is available only to reimburse eligible full power and Class A stations and MVPDs or whether the REA also permits this money to be used to reimburse LPTV, TV translators, and FM stations as well as to fund the Commission’s consumer education efforts.

4. The Commission concluded that the REA does not prohibit use of the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 from being paid to any specific category of eligible station or for consumer education. This interpretation of the statute is consistent with widely-accepted principles of statutory construction. The REA contains no limitations on how to allocate the fiscal year 2019 funds among the various eligible entities and consumer education. Therefore, the Commission believes the text of the statute plainly provides it with authority, or at minimum can reasonably be construed as providing the Commission with authority, to use fiscal year 2019 funds to reimburse all entities eligible under the statute and for consumer education.

Prioritization of Fiscal Year 2019 Funds

5. The Commission will prioritize the payment of fiscal year 2019 funds to full power and Class A stations and MVPDs over the payment of newly eligible LPTV/translator and FM stations. After eligible full power, Class A, and MVPD entities have been reimbursed using fiscal year 2019 funds, any funds remaining from the \$400 million appropriated for fiscal year 2019 will be used to reimburse eligible LPTV/ translators and FM stations. The Commission agreed with American Cable Association (ACA) that this approach toward prioritization of fiscal year 2019 funds is most consistent with Congress’s intent with respect to

reimbursement. Full power, Class A, and MVPD entities were Congress’s top priority for reimbursement when it adopted the Spectrum Act, which established the Reimbursement Fund and allocated \$1.75 billion to be used to reimburse eligible full power and Class A stations and MVPDs for their incentive auction-related expenses. Further, in the REA, Congress appropriated \$350 million for full power, Class A, and MVPD entities in fiscal year 2018 as compared with appropriations of \$150 million for LPTV/translator stations and \$50 million for FM stations in fiscal year 2018. In light of Congress’s prioritization of full power, Class A, and MVPD entities with respect to the amount of money appropriated for reimbursement of these entities, the Commission believed it is appropriate to use the \$400 million appropriated for fiscal year 2019 to first reimburse full power, Class A, and MVPD entities before using any remaining fiscal year 2019 funds to reimburse newly eligible entities.

6. While no commenter argued that the Commission should not prioritize between eligible entities if there is a shortfall of funds, some contended that the Commission should postpone a prioritization decision until more information is available. However, the Commission disagreed with National Association of Broadcasters (NAB) and HC2 that it should wait to adopt a prioritization scheme until after LPTV/ translator and FM stations have submitted cost estimates and, at that point, only if it becomes clear that the demand on repacking funds will exceed the funds available, making prioritization necessary. If the Commission were to defer making a prioritization decision until LPTV/ translator and FM station cost estimates are submitted and evaluated by the Commission and Fund Administrator, this could delay payments to all reimbursable entities from the fiscal year 2019 funds, as none of those funds could be spent until a full assessment of the demand of all entities was completed. In addition, establishing a prioritization method later could require additional public comment, further delaying the distribution of fiscal year 2019 funds. As noted above, the Commission’s determination that the \$400 million allocated for 2019 should be used first to pay full power, Class A, and MVPD entities is consistent with congressional priorities, making any delay in developing a prioritization scheme unnecessary.

7. The Commission also declined to adopt NAB’s argument that primary full

power FM stations should be prioritized over secondary LPTV and TV translator stations. NAB argued that, because LPTV stations are secondary licensees and therefore subject to displacement by full power and Class A television stations, they should “yield to primary licensees with respect to reimbursement” as they do with respect to licensing. The Commission rejected this approach. The text of the statute suggests no such priority for FM stations vis-à-vis LPTV and TV translator stations, which serve as an important source of programming in many communities.

LPTV and TV Translator Stations—Eligibility and Expenses

Stations Eligible for Reimbursement

8. *LPTV/Translator Stations.* The Commission found that pursuant to the REA, LPTV/TV translator stations, as defined by the Commission’s rules, are eligible for reimbursement from the Reimbursement Fund if they satisfy the remaining eligibility criteria.

9. *Special Displacement Window Criteria.* The Commission adopted its tentative conclusion that, in order to be eligible for reimbursement, a station must be an LPTV/translator station that was eligible to file and did file an application during the Special Displacement Window. In order to be eligible to file in the Special Displacement Window, the LPTV/ translator station must have been “operating” on April 13, 2017—the date of the release of the Closing and Channel Reassignment Public Notice. For this purpose, a station was “operating” if it either had licensed its authorized construction permit facilities or had an application for a license to cover on file with the Commission on that date. Further, in order to be eligible to file in the Special Displacement Window, a station must also have been “displaced . . . as a result of the broadcast television spectrum incentive auction.”

10. The Commission further adopted its tentative conclusion that, to be eligible for reimbursement, a station’s displacement application filed during the Special Displacement Window (or prior to the window with grant of a waiver, or subsequently amended prior to the close of the Settlement Window) must have been granted. The Commission continues to believe that this additional criterion is essential to ensure the integrity of the reimbursement program and is consistent with Section 511(k)(1), which requires reimbursement of only costs reasonably incurred to “relocate . . .

television service from one channel to another channel . . . or otherwise modify [a] facility.” The Commission believes that eligibility must be limited to stations with valid displacement construction permits, obtained through the procedural mechanisms associated with the Special Displacement Window, that will permit them to construct the displacement facilities for which they receive reimbursement. Otherwise, providing reimbursement to eligible stations whose applications are not granted will result in reimbursement for expenses related to facilities that will not be constructed to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.” NAB supported defining eligibility to include stations that were granted displacement construction permits as a result of filing a Special Displacement Window application, arguing that “any other outcome would risk reimbursing stations for facilities that they are ineligible to construct, which would only waste funds.” No commenter opposed this tentative conclusion.

11. The Commission adopted its tentative conclusion that if an LPTV/translator station displaced by the repacking process filed in the Special Displacement Window, had its application dismissed, and subsequently files a displacement application when the Media Bureau lifts the freeze on the filing of such applications, it will be eligible for reimbursement under the REA if its later-filed displacement application is granted. NAB and HC2 supported this tentative conclusion, and no one opposed it. Although they would receive their construction permit through a displacement application that was not filed during the Special Displacement Window, the Commission concluded that these stations meet the threshold eligibility criteria under the REA because such stations were “eligible to file and [did] file an application” in the Special Displacement Window. The Commission concluded that such stations are affected by the reorganization of broadcast television spectrum in the same way as other displaced LPTV/translator stations. Such stations may request and be granted a waiver of any reimbursement program filing deadlines that occur prior to that station’s filing of the construction permit application. However, for practical purposes, the Commission will limit such stations to only those that have a granted construction permit by whatever final

deadline the Commission set for the submission of reimbursement expenses and only to the extent funds remain available for LPTV/translator stations in the Reimbursement Fund.

12. *Licensed and Transmitting Eligibility Criteria.* The Commission adopted its proposals as set forth in the *NPRM* defining the REA’s mandate that stations must be “licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017” to be eligible to receive reimbursement. The statute specifies that “the operation of analog and digital companion facilities may be combined” for purposes of the “licensed and transmitting” requirement. Stations that were licensed or that had an application for a license to cover on file with the Commission on April 13, 2017, will be considered “licensed” for purposes of REA reimbursement eligibility.

13. With regard to the “transmitting” element, the Commission adopted its proposed definition requiring that LPTV/translator stations must have been operating not less than 2 hours in each day of the week, and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017, in order to be eligible for reimbursement. This approach relies on the Commission’s minimum operating schedule rule for commercial full power television broadcast stations. Given the finite nature of the Reimbursement Fund, it is necessary to give reasonable meaning to the eligibility criteria set forth in the REA, including the requirement that stations must have been “transmitting” during the relevant period. The Commission believes that this requirement reflects the legislative mandate that only “transmitting” stations be eligible to receive reimbursement.

14. HC2 supported imposing minimum operating requirements for stations to meet the “transmitting” component of the reimbursement eligibility criteria, and NAB expressed general agreement with the Commission’s proposals to define LPTV/translator stations eligible for reimbursement. The Commission agreed with HC2 that “it is appropriate for the limited pool of LPTV reimbursement funds to be applied to LPTV stations that have demonstrated their commitment to, and have invested resources in, consistent operations.” The Commission disagreed with the LPTV Spectrum Rights Coalition (LPTV Coalition) that, because there is no minimum daily operating requirement for LPTV/translator stations in the Commission’s rules, the Commission’s proposal is inconsistent with actual

business practices based on the rules. The Commission did not believe that the current rules on LPTV/translator station operating requirements should be determinative of the meaning of “transmitting” in the REA for purposes of eligibility for reimbursement. Congress expressly included a “transmitting” requirement in the statute, and the Commission found that the inclusion of this requirement reflects Congress’s intent to ensure that reimbursement funds are placed into the hands of stations that are actually operating and whose viewers stand to lose service as a result of their displacement absent such reimbursement. Further, because there are no minimum operating requirements for LPTV/translator stations in the Commission’s rules, Congress could not have intended to use the transmitting rule applicable to LPTV/translator stations to define “transmitting” because that would render the term superfluous.

Other Eligible Stations

15. *Early Displaced Stations.* The Commission adopts the *NPRM*’s proposal that LPTV/translator stations that were displaced prior to the opening of the Special Displacement Window but were eligible to file and did file in the Special Displacement Window are eligible for reimbursement under the REA. Commenters support the proposal, and no commenter opposes it. As noted above, approximately 340 LPTV/translator stations were displaced prior to the Special Displacement Window due to T-Mobile’s decision to commence operations or conduct FAA testing on some of its 600 MHz spectrum prior to the Special Displacement Window. The Commission provided tools for these early-displaced stations to continue to be able to operate, including allowing the stations to submit displacement applications prior to the opening of the Special Displacement Window with a request for waiver of the current displacement freeze, together with a request for Special Temporary Authority to temporarily operate the facility. The Commission also explained that it would treat these applications as if filed on the last day of the Special Displacement Window and process them in accordance with the rules for that window. As a result, these stations are eligible for reimbursement.

16. *Replacement Translators.* The Commission adopts the *NPRM*’s proposal finding that analog-to-digital replacement translators (DRTs) are eligible for reimbursement pursuant to the REA. In the *Incentive Auction R&O* (79 FR 48442), the Commission

concluded that DRTs authorized pursuant to § 74.787(a)(5) of the Commission's rules that were displaced by the incentive auction and repacking process were eligible to file displacement applications during the Special Displacement Window. Because DRTs were displaced as a result of the reorganization of broadcast television spectrum, were eligible to file in the Special Displacement Window, and are considered "TV translators" and licensed under the same part 74 rules as other TV translator stations, the Commission concluded that displaced DRTs also are eligible for reimbursement pursuant to the REA, provided that they meet the other eligibility requirements. NAB generally supports this proposal, and no commenter opposes it.

17. The Commission adopts the NPRM's tentative conclusion that digital-to-digital replacement translators (DTDRTs) are not eligible for reimbursement under the REA. In the *LPTV DTV Third R&O* (81 FR 5041), the Commission established a new DTDRT service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process. The Commission concluded that full power stations could begin to file for DTDRTs beginning with the opening of the Special Displacement Window on April 10, 2018, and ending one year after completion of the incentive auction transition period. Although they were eligible to file in the Special Displacement Window, and DTDRTs are similar to DRTs in that they are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations, the Commission concludes that new DTDRTs are not eligible for reimbursement under the REA because they would not have been "licensed and transmitting" for 9 of the 12 months prior to April 13, 2017, as required by the statute. In addition, even if they were otherwise eligible under the statutory criteria, DTDRTs are newly established facilities and thus are not "relocat[ing] . . . from one channel to another channel" or "modify[ing]" their facilities as required by the statute. NAB generally supports this tentative conclusion, and no commenter opposes it.

18. *Class A Television Licensees.* The Commission adopts its tentative conclusion in the NPRM that (1) Class A stations reimbursed from funds under the Spectrum Act or the additional full power/Class A funding in the REA are not eligible for reimbursement from funds dedicated to LPTV/translator reimbursement under the REA; and (2)

"a low power station that has been accorded primary status as a Class A television licensee that receives reimbursement under Section 511(k)(1) of the REA" and "that filed in the Special Displacement Window" is not eligible for reimbursement under the Spectrum Act. No commenter disagrees with its interpretation.

19. Further, the Commission finds that the group of Class A stations (the "Class A Commenters") that filed for and obtained their Class A licenses after February 22, 2012, but were not eligible to participate in the incentive auction or receive reimbursement under the Spectrum Act and were subsequently displaced as a result of the repacking process but availed themselves of the opportunity to file for a new channel in the first "priority" filing window for repacked stations in 2017, are not eligible for reimbursement from REA funds dedicated to LPTV/translator stations. The Class A Commenters assert that their Class A stations should be eligible for reimbursement under the REA. In the incentive auction proceeding, the Commission declined to protect in the repacking process Class A licensees that did not file an application for a Class A authorization until after February 22, 2012, the date of enactment of the Spectrum Act. The Class A Commenters' stations were among the Class A stations that were not protected in the repacking as a result of this decision. Moreover, they were not eligible for reimbursement under the Spectrum Act. The Class A Commenters acknowledge that the REA establishes certain eligibility criteria in order to claim reimbursement of costs reasonably incurred as a result of the repacking. They contend, however, that their Class A stations meet these eligibility criteria for reimbursement under the REA. The Commission disagrees.

20. The REA specifies that a "low power television station" eligible for reimbursement is one "defined in § 74.701 of title 47, Code of Federal Regulations . . . that was licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017." The Class A Commenters' stations have been Class A television stations, which are authorized under part 73 of its rules, since 2013 when they filed license applications to convert their low power television stations to Class A status. At no time during the relevant time period for reimbursement under the REA—April 13, 2016, through April 13, 2017—were they authorized or operating as low power television or television translator stations under part 74 of its rules. Although Class A Commenters

argue that Congress must have intended to include Class A stations in the definition of LPTV in the REA because otherwise Section 1452(k)(3) would be rendered "superfluous," the Commission disagrees. Rather, the Commission believes that Section 1452(k)(3) reinforces Congress's intent that for purposes of the REA, like the Spectrum Act and reimbursement program generally, the two categories of stations remain distinct.

21. In addition, the REA provides that "[o]nly stations that are eligible to file and do file an application in the Commission's Special Displacement Window are eligible to seek reimbursement." The Commission interprets the statutory term "Special Displacement Window" in accordance with the Commission's use of that term before the passage of the REA because neither the REA nor the Communications Act defines the term, and "Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations." Consistent with the Commission's use of the term "Special Displacement Window," the Commission interprets that term as limited to the filing window opening on April 10, 2018 and closing on June 1, 2018 during which operating LPTV/translator stations subject to displacement had an opportunity to file for a new channel. In contrast, the Class A Commenters filed construction permit applications for new channels during the first "priority" filing window for repacked stations in 2017, and not during the Special Displacement Window that opened in 2018, and thus they fail to satisfy the second prong of the statutory eligibility standard. The Commission disagrees that the term "Special Displacement Window" in the REA should be interpreted to include applications filed in the first priority filing window. When the Commission declined to exercise its discretion to protect approximately 100 out-of-core Class A eligible LPTV stations that had not filed a Class A application by February 22, 2012, it stated that any LPTV station that filed a Class A application after that date and was displaced in connection with the incentive auction would be provided "with an advance opportunity to locate a new channel." The Commission later specifically identified that "advance opportunity" as the "first filing opportunity" for alternate channels. Commission statements evidence an intent that the early filing opportunity for displaced Class A stations be treated

separately from the Special Displacement Window for displaced LPTV/translator stations. Thus, the Commission disagrees that the term “Special Displacement Window” in the REA should be interpreted to include applications filed by the Class A Commenters during the first priority filing window.

22. Class A Commenters also argue that finding them eligible would be consistent with “Congress’s desire to ensure that all broadcasters are reimbursed for their costs incurred as a result of the post-auction transition.” The REA, however, does not require that the Commission reimburse all broadcasters for their costs. The REA specifically limits reimbursement to costs reasonably incurred after January 1, 2017, by LPTV/translator stations that were displaced by the incentive auction, were licensed and operating for nine of the 12 months prior to April 13, 2017, and which filed during the Special Displacement Window. Congress restricted eligibility under the REA to LPTV/translator stations that, as defined by § 74.701 of the rules, filed displacement applications during the Special Displacement Window—a group that does not include part 73 Class A television stations that were permitted to file for and obtain new channels outside the Special Displacement Window.

Expenses Eligible for Reimbursement

Costs Reasonably Incurred

23. The REA provides that the Commission “shall reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under the Spectrum Act. The Commission adopts the *NPRM*’s tentative conclusion that equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by the grant of the station’s Special Displacement Window application shall be considered costs “reasonably incurred,” subject to the specific restrictions described herein. Commenters generally support its tentative conclusion that equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application be considered “reasonably incurred” under the REA.

24. The Commission affirms its belief that the “comparable” facilities

reimbursement standard adopted for repacked full power and Class A stations cannot, as a technical matter, be applied to displaced LPTV/translator stations. As it explained in the *NPRM*, the post-auction channel assignments for full power and Class A stations specified in the *Closing and Channel Reassignment PN* were made at stations’ existing locations and largely replicated stations’ pre-auction facilities, while displaced LPTV/translator stations may need to move their transmitter and antenna locations as well as change channels. In addition, in order to continue providing service to viewers from a new site, displaced stations may need to increase effective radiated power and height which could require the purchase of other equipment not necessarily “comparable” to existing equipment. Below, the Commission offers additional clarification about the eligibility of specific expenses that were addressed in the record.

25. *Full Service Mask Filters*. The Commission finds that the costs for full service mask filters are reimbursable if they were specified in the station’s Special Displacement Window application as granted by the Commission. Consistent with its finding that the equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application will be deemed “reasonably incurred” under the REA, the Commission also finds that displaced stations will be permitted to seek reimbursement for the costs associated with the emission mask specified in their granted construction permit application. The Commission notes that even prior to the release of the *NPRM* in August 2018, LPTV/translator stations that filed in the Special Displacement Window had already determined what level of filter to utilize and specified that filter in the station’s Special Displacement Window application. To date, over 94 percent of these applications have already been granted or dismissed. Given that these stations selected their mask filter level without knowing whether this equipment would be reimbursed, the Commission finds that their selection of a particular level is unlikely to have been influenced by the availability of reimbursement.

26. Several commenters support reimbursement for the costs of full service mask filters, and only one, NTA, objects. Although NTA opposes reimbursement for full service mask filters on the grounds that “there is no justification for a station adopting a particular filter beyond its own needs, and receiving government

reimbursement [for that expense],” the Commission finds, given the timing of their selection as discussed above, that there was no incentive for a station to specify a level of filter that is not appropriate for its needs. Moreover, the Commission notes, that as a practical matter, unless there are adjacent channel facilities in a displaced LPTV/translator station’s vicinity, specifying a full service mask rather than a simple or stringent mask confers no benefit to the station. Use of a full service mask permits a displaced station to choose a channel that would not otherwise be available because a simple or stringent mask would not adequately confine out-of-channel emissions to operations on adjacent channels. For these reasons, the Commission believes that its approach of reimbursing the mask filter that was specified in the displacement applications is a reasonable one.

27. *Translator Microwave/STL Facilities*. The Mohave County Board of Supervisors (Mohave County) filed comments describing how the repacking of the television band has impacted its network of translators in western Arizona, including modifications to existing terrestrial microwave facilities to allow a displaced translator station to continue to feed its signal on its new channel to another translator station. Mohave County requests that the Commission reimburse such costs. The Commission believes that Mohave County’s request is best addressed on a case-by-case basis in the context of a request for reimbursement. Further, LPTV Coalition maintains that displaced LPTV stations may need to replace studio transmitter links (STLs) and requests that the Commission reimburse such costs. The Commission finds that there may be some instances where reimbursement for STLs may be appropriate, such as where LPTV stations incur expenses for STL adjustments associated with a change in location resulting from the reorganization of broadcast television spectrum. The Fund Administrator and the Media Bureau will review the specific circumstances presented by any entity claiming reimbursement for microwave facilities or STLs to determine whether they are eligible for reimbursement under the statute.

28. *Displacement Caused by Modification Filings*. In the *NPRM* the Commission noted that, while the Commission’s reorganization of television spectrum under Section 1452(b) of the Spectrum Act was completed with the issuance of the *Closing and Channel Reassignment PN*, the Commission also afforded reassigned stations the opportunity to

file applications for alternate channels or expanded facilities during two filing windows that ended on September 15, 2017, and November 2, 2017. While applications filed by reassigned stations during the two filing windows were not required under Section 1452(b) of the Spectrum Act, they may have resulted in displacement of LPTV/translator stations making those stations eligible to file applications in the Special Displacement Window. Accordingly, the Commission sought comment on whether the REA's requirement that the Commission reimburse costs reasonably incurred "as a result of the reorganization of broadcast television spectrum" extends to include costs incurred by LPTV/translator stations that were displaced solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through these two filing windows. The Commission agrees with NAB that "these filing windows were authorized by the Commission in its incentive auction framework order and plainly constitute part of the repack." Thus, it concludes that reimbursing LPTV/translator stations for such costs is consistent with the REA. No commenter opposes this proposal.

Equipment Upgrades and Reuse of Existing Equipment

29. The Commission adopts the *NPRM's* proposal with respect to equipment upgrades and reuse of existing equipment. In implementing the Spectrum Act's reimbursement provisions, the Commission concluded that it would not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced, and the Commission proposed to apply the same approach to eligible LPTV/translator stations. In addition, consistent with its approach for full power and Class A stations, the Commission proposed a similar requirement that displaced LPTV/translator stations reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment.

30. Consistent with the approach the Commission has taken when reimbursing full power and Class A stations, the Commission will not provide reimbursement for optional features beyond those already present in the station's facilities. NAB and HC2 support the proposal not to reimburse stations for new or optional features that are not already present in the equipment being replaced, but also note that

"technological advances may mean some features are now standard in equipment and some upgrades may thus be inevitable." The Commission acknowledges that some stations may not be able to replace older, legacy equipment with equipment that is precisely comparable in functionality because of advances in technology. If the cost to replace certain equipment is reasonably incurred so that an LPTV/translator station can construct its granted Special Displacement Window construction permit facility, the Commission will reimburse for the cost of that equipment, recognizing that the equipment may include some improved functionality.

31. With respect to equipment repurposing, consistent with the approach the Commission has taken in reimbursing full power and Class A stations, LPTV/translators should reuse their own equipment to the extent possible and, if seeking reimbursement for new equipment, provide a justification when submitting their cost estimates as to why the cost to purchase new equipment rather than modify their current equipment to conform to their displacement construction permit is "reasonably incurred." LPTV Coalition asserts that "[m]any in the LPTV industry did not reinvest[] into new equipment if they knew they were going to be displaced by the auction [and] many of the transmission systems are in need of replacement and upgrading. Upgrading when they build out their new construction permits should be allowed as much as possible." The Commission disagrees. The Commission does not believe that the cost for new equipment can be considered "reasonably incurred" if the station already has a functional piece of equipment it can use rather than replace. The Commission also notes that almost 80 percent of LPTV/translator stations transitioned from analog to digital, mostly since the end of the DTV transition in 2009, and it has no basis for concluding that a significant amount of this relatively new digital equipment is in need of replacement.

Interim Facilities

32. The Commission will consider on a case-by-case basis whether expenses for interim facilities are eligible for reimbursement under the REA for LPTV/translator stations. The Commission acknowledges that in the *Incentive Auction R&O*, the Commission concluded that stations that are assigned a new channel in the incentive auction repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition

and decided to reimburse full power and Class A stations for such facilities under the Spectrum Act reimbursement provisions. Because of their lower operating power and the fact that the engineering work that is involved in changing channels is more limited than for full power television stations, the Commission stated in the *NPRM* that it did not believe that LPTV/translator stations will need to construct interim facilities as part of the displacement process and the Commission proposed that such expenses should not be eligible for reimbursement under the REA for LPTV/translator stations. However, LPTV Coalition contends that LPTV stations may need to implement interim facilities in certain circumstances. While the Commission thinks it is unlikely that LPTV stations will need interim facilities, it will consider the facts presented on a case-by-case basis.

Lost Revenues

33. The REA, like the 2012 Spectrum Act, explicitly prohibits reimbursement of LPTV/translator stations for "lost revenues." As proposed in the *NPRM*, the Commission adopts the same definition it adopted in the *Incentive Auction R&O* and that it apply to full power and Class A stations in the existing reimbursement program for "lost revenues." Specifically, it defines "lost revenues" as those "that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the repacking process and the reallocation of UHF spectrum in conjunction with the incentive auction." Under this definition, for example, it will not reimburse a station's loss of advertising revenues while it is off the air during its displacement, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement a channel change. The Commission agrees with LPTV Coalition that it simply is not practical to permit reimbursement for lost revenues and also believe that allowing reimbursement for these expenses would unduly burden the Reimbursement Fund.

Costs To Resolve Mutually Exclusive Applications

34. The Commission adopts the *NPRM's* proposals to prohibit reimbursement of costs associated with resolving mutually exclusive applications. The REA provides that "[t]he Commission may not make reimbursement . . . for costs incurred to resolve mutually exclusive applications, including costs incurred in any auction

of available channels.” Applications filed during the Special Displacement Window that remain mutually exclusive will be resolved through competitive bidding. The Commission interprets the prohibition against reimbursing for “costs incurred in any auction” to mean that the Commission may not reimburse LPTV/translator station auction bidders under the REA for the costs related to filing an auction application associated with a competitive bidding process, participating in such an auction, and winning bid payments. The Commission also concludes that costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed under the REA. Thus, the Commission will not reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations’ expenses as part of a settlement. However, the Commission will permit reimbursement for certain engineering costs reasonably incurred in constructing the facilities resulting from settlement and coordination between mutually exclusive applicants. For example, as suggested by LPTV Coalition, the cost for a channel study used to settle a mutually exclusive group may be reimbursed if it can be demonstrated that the same channel study is subsequently used to support an amendment to a displacement application.

Stations With Other Sources of Funding

35. The Commission finds that stations that receive or have received reimbursement of certain expenses from sources of funding other than the Reimbursement Fund are not eligible to receive reimbursement for those expenses from the Reimbursement Fund. Section 511(k)(3)(A) of the REA specifies that Class A stations that receive reimbursement from “any other source” may not receive reimbursement under the REA. While the REA did not explicitly set forth an identical requirement for LPTV/translator stations, the Commission believes that the statute as reasonably interpreted extends a similar prohibition to LPTV/translator stations. The REA requires the Commission to “reimburse costs reasonably incurred.” Congress did not define these terms in the REA, the Spectrum Act, or the Act. The dictionary definition of the term “reimburse” is to “pay back to someone; repay”; “to make restoration or payment of an equivalent to.” For stations that are reimbursed by a third party, there is nothing for the Commission to “pay back” or for which to “make

restoration” because the stations have already been made whole. Indeed, as a practical matter, monies from the Reimbursement Fund would be used to reimburse T-Mobile, which does not qualify as an entity eligible for reimbursement under the REA.

36. NAB and Class A Commenters agree that stations that have already received, or will receive, funding from other sources should not be eligible for reimbursement. T-Mobile disagrees, arguing that “a cost that is reimbursed by another source of funding is still a ‘cost . . . incurred’ by the station under the statute, given that a station must first incur such costs before seeking reimbursements from third parties.” LPTV Coalition likewise contends that the Commission should reimburse stations pursuant to the REA even if they have received funding from other sources. The Commission disagrees. Those commenters’ position ignores the fact that the station will be made whole for certain expenditures through reimbursement from another source of funding. Such an approach could potentially result in windfall payments to LPTV/translator stations above the costs they reasonably incurred to relocate from one channel to another or otherwise modify their facilities, and at a minimum would require the Commission to investigate the private contractual or other relationships between parties to assure that duplicate payments are not made. The Commission believes it far more likely that Congress did not intend to permit such obvious windfalls. In any case, the Commission finds it axiomatic that sound administration of federal funds requires that no expense is eligible for reimbursement if the same expense is funded from another source. Such a conclusion could subject the Reimbursement Fund to waste, fraud, and abuse.

37. Consistent with its holding above that the REA prohibits duplicative payments, the Commission will not reimburse displaced stations for costs for which they have already received reimbursement funding from T-Mobile’s Supplemental Reimbursement Program or its translator reimbursement grant program administered through PBS. In the *NPRM*, the Commission sought comment on whether displaced LPTV/translator stations that have received reimbursement from T-Mobile for a particular expense should receive reimbursement for that expense pursuant to Section 511(k)(1). In its comments, T-Mobile argues that stations that receive funding from third parties should be eligible for reimbursement under the REA after making a

certification to prevent the double recovery of their relocation expenses. The Commission rejects this argument and agrees with NAB that the Commission “should not effectively reimburse” third parties that already made a voluntary commitment to fund the relocation of displaced LPTV/translator stations before they were aware that any federal source of funding would be available through the REA. The Commission should not, after those business arrangements are established, stand as an insurer of T-Mobile’s commitment. There is no question that entities that are not displaced stations, such as T-Mobile and PBS, are not eligible to receive direct reimbursement from the Reimbursement Fund because they do not meet the eligibility requirements under the REA. While T-Mobile proposes that stations certify that they will use their REA reimbursement proceeds to promptly reimburse third parties such as T-Mobile and PBS, the Commission does not believe that such certification would satisfy the Commission’s obligation to ensure that the limited fund is administered only to reimburse costs that are not otherwise subject to reimbursement from other sources. Furthermore, T-Mobile does not propose a mechanism for the Commission to audit and ensure that the REA reimbursement funding is in fact transferred between these private parties. The Commission believes that such a certification could require the Commission staff to act as an auditor for the two reimbursement programs established by T-Mobile at both risk and expense to the government. The Commission should not insert itself into such private commercial transactions absent clear statutory direction that it does not find in the REA. The Commission finds, however, that if T-Mobile’s reimbursement is less than the amount for which the station would be eligible under the reimbursement rules and procedures adopted in this proceeding, the station may request reimbursement from the Reimbursement Fund for any shortfall.

38. The Commission requires displaced stations to certify on their reimbursement submissions that they have not received nor do they expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA, and it also requires stations to first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA. This includes but is not limited to sources of funding such as insurance or existing

state grants. This is consistent with the approach taken in connection with reimbursement of full power and Class A stations, where, for example, it has required stations to first seek reimbursement from an insurer before seeking reimbursement from the Commission. NTA asks that the Commission clarify that it will reimburse state or municipal government-owned translators where the reimbursement funds will be returned to the governmental entity. According to NTA, “Congress did not intend to penalize states and local governments that maintain translators,” and reimbursing these government-owned translators should not be considered a duplicative payment. The Commission agrees with NTA and clarifies that its decision on duplicative payments does not implicate the eligibility of translators that are licensed to governmental entities. Such translators are eligible for reimbursement, just as any other eligible translator station that files in the Special Displacement Window and incurs costs due to its displacement.

FM Broadcast Stations—Eligibility and Expenses

Stations Eligible for Reimbursement

39. The Commission finds that pursuant to the REA, FM stations are eligible for reimbursement from the Reimbursement Fund if they satisfy the criteria described below.

FM Broadcast Stations and FM Translator Stations

40. The Commission adopts the tentative conclusion in the *NPRM* that “FM broadcast stations” includes both full-service FM stations and FM translator stations. NAB supports this tentative conclusion, and no commenter disputes it. Congress defined “FM broadcast stations” in the REA by referencing §§ 73.310 and 74.1201 of the Commission’s rules. Section 73.310 defines an FM broadcast station as “[a] station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.” Additionally, Congress specifically stated that FM translator stations as defined in § 74.1201 of the Commission’s rules would be eligible for reimbursement.

41. The Commission also concludes that low-power FM (LPFM) stations qualify for reimbursement. In the *NPRM*, the Commission sought comment on whether LPFM stations, which were not specifically referenced

in the REA, should nonetheless be considered “FM broadcast stations” for reimbursement purposes. It noted that such stations meet the criteria for “FM broadcast station” set forth in § 73.310 of the rules and are licensed under part 73 of the rules like full-service FM stations. Both NAB and REC are in favor of reimbursement eligibility for LPFM stations, and no commenter opposes this interpretation. REC argues that even though LPFM stations are secondary services, because they originate programming, have Emergency Alert System equipment, and hold responsibilities as broadcasters, they should be considered FM broadcast stations for reimbursement purposes. For all these reasons the Commission concludes that LPFM stations qualify for reimbursement.

Licensed and Transmitting at Time of Repack

42. For LPTV/translator stations, as noted above, the REA defines eligibility by reference to licensing and transmitting prior to a specific date (April 13, 2017). It includes no such specific reference in addressing FM stations. The Commission adopts its tentative conclusion that to be eligible for reimbursement under the REA, an FM station must have been licensed and transmitting on this same date, using facilities impacted by a repacked television station. The Commission also adopts its tentative conclusion that only those costs associated with the impact at that location will be considered eligible. It believes it is necessary and appropriate to impose some reasonable standards on the eligibility of stations to be reimbursed from the Reimbursement Fund, and it concludes that it should place the same limitation on FM stations that is applied to LPTV/translator stations. As explained in the *NPRM*, the Commission chose this date because it is the date on which reverse auction winners and the television stations subject to the repack were identified in the *Closing and Channel Reassignment PN*, and it tentatively concluded that any FM station that began operating on a facility or at a location impacted by a repacked television station after that date voluntarily assumed the risk of any potential disruption of service to the FM station. NAB, the only commenter to address this issue, agrees with this rationale and supports using a “licensed and transmitting on April 13, 2017” standard for eligibility of FM stations. Thus, the Commission adopts this tentative conclusion and finds that any costs incurred by FM stations that undertook such a risk are not

“reasonably incurred” under the statutory standard and therefore are not eligible for reimbursement under the REA.

43. The Commission affirms its conclusion that there must be a causal link between the facilities for which reimbursement is sought and repack-related work to a full power or Class A television station. The REA requires reimbursement “to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)].” In the *NPRM*, the Commission tentatively concluded that an FM station can experience a service disruption “as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]” either because a full power or Class A television station has been reassigned to a new channel in the *Closing and Channel Reassignment PN*, or because a full power or Class A television station relinquished spectrum usage rights in the reverse auction. In either case, modification of the full power or Class A television station may impact the FM station. The Commission interpreted the statutory language to require a causal link between the facilities being reimbursed and the activities associated with the station relinquishing spectrum rights or the repacked full power or Class A television station, and likewise interpreted this provision to mean that only the FM broadcast facilities directly impacted by the repacked television station would be eligible for reimbursement. The Commission believes that this interpretation of the REA is consistent with Congress’s provision of limited funds for FM facility reimbursement. NAB agrees that the clear intent of the REA was to require a causal link between work done because of repacking or channel relinquishment and expenses for which an FM station seeks reimbursement, and no commenter disputes its interpretation.

44. Consistent with its finding with respect to LPTV/translator stations, the Commission concludes that reimbursing FM stations for costs incurred due to television station modifications resulting from authorizations received through the alternate channel/expanded facilities filing windows is consistent with the REA. The Commission sought comment on whether the REA’s requirement that it reimburse costs incurred by FM stations to “reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]” extends to costs incurred by FM stations solely due to modifications

made by full power and Class A facilities as a result of receiving authorizations through the two alternate channel/expanded facilities filing windows. NAB urges the Commission to permit reimbursement under the REA for work done because of modifications as a result of receiving authorizations through the alternate channel/expanded facilities filing windows. The Commission agrees with NAB that “these filing windows, authorized by the Commission in its incentive auction framework order, plainly constitute part of the repack.”

Categories of Eligible FM Stations

45. In the *NPRM*, the Commission proposed three categories of stations that the Commission anticipated will encounter any disruption of service as a result of the reorganization of broadcast television spectrum such that they would be eligible for reimbursement under the REA. The Commission adopts its proposal to assign affected FM stations to the three categories of service disruption set forth below, and to allow reimbursement to FM stations in these three categories:

46. *Category (1)—Stations Forced to Relocate Permanently.* The Commission proposed that this eligibility category include FM stations required either to vacate their towers, and which therefore incur costs for alternative facilities at a different site, or to relocate permanently their antennas to a different level of their current towers.

47. *Category (2)—Stations Forced to Temporarily Dismantle Equipment or Make Other Changes Not Requiring Commission Approval.* The Commission proposed that this eligibility category include FM stations required temporarily to dismount or disassemble equipment, most likely antennas, in order to accommodate work on a television antenna or a tower. The Commission also proposed that this category include FM stations required to physically move their transmitter to accommodate new television transmission equipment, and also include other types of necessary equipment modifications that do not require Commission approval.

48. *Category (3)—Stations Forced to Temporarily Reduce Power or Cease Transmission on Their Primary Facility to Accommodate Antenna or Tower Modifications.* The Commission proposed that this eligibility category would include those FM stations that are required to reduce power or go off the air to protect workers making modifications to television facilities on a tower from RF exposure. FM stations in other eligibility categories could also

qualify as Category (3) stations if they otherwise meet the reimbursement requirements.

49. As noted in the *NPRM*, the Commission believes that reimbursing FM stations for the types of service disruptions described in these categories is consistent with its statutory mandate to reimburse FM stations for “costs . . . for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” NAB “agrees that these three categories should cover the universe of affected stations,” and no commenter disagrees with the categorization of FM stations proposed above or suggests additional categories.

50. The Commission also adopts its tentative conclusion that FM stations will be required to certify that they have not received or do not expect to receive payment from other sources for interim facilities constructed or leased as a result of repack-related service disruptions. Section 511(l)(1)(C) of the REA specifies that an FM station that has received payment for “interim facilities” from either a television station that was reimbursed under the Spectrum Act or “from any other source” may not receive “any reimbursements” under the REA. Based on the statutory language, the Commission concludes that any FM station that has received such payment for “interim facilities,” is ineligible for any reimbursement under the REA. Commenters agree with these conclusions. As discussed above, the Commission believes the government should not act as an insurer with regard to voluntary reimbursements made by third parties.

Expenses Eligible for Reimbursement

51. In the *NPRM*, the Commission observed that the REA requires the Commission to provide reimbursement for “costs reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” The Commission tentatively concluded that tying reimbursement to a requirement for some level of disruption of service to eligible FM stations is reasonable, and noted that the public interest requires that the Commission seek to maximize the limited funds available for all facilities to address the most significant service disruptions to ensure that the most needed facilities are fully funded. The Commission thus sought comment on how to define what costs are “reasonably incurred” and on how to

interpret the phrase “to reasonably minimize disruption of service” as contemplated by the REA, and proposed an approach for prioritization of reimbursement to FM stations. Below the Commission describes expenses that the Commission find are eligible for reimbursement pursuant to the REA.

Costs Reasonably Incurred

52. First, as proposed in the *NPRM*, the Commission finds that eligible costs for Category (1) and Category (2) stations are similar to eligible costs for full power and Class A stations in the repack, and therefore should be reimbursed in a similar manner. No commenter took issue with this proposal, and the Commission therefore adopt it as discussed in greater detail below. As a result, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1) and Category (2) stations should be eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations.

53. Second, the Commission declines to adopt its proposal that reimbursement for Category (3) stations should be subject to a graduated priority system based on the significance and duration of service disruption. No commenter supports this proposal. Instead, as discussed in more detail below, the Commission concludes that if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (3) stations that experience more than a *de minimis* level of service disruption will be eligible for reimbursement for up to 100 percent of eligible costs.

Replacing or Restoring Facilities—Category (1) and (2) Stations

54. *Category (1) Stations.* The Commission concludes that Category (1) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, the Commission stated its belief that reimbursement of costs associated with Category (1) FM stations should be based on a standard similar to that developed for the existing reimbursement program for full power and Class A stations because the nature of the relocation of the FM station and types of costs incurred are similar. As such, the Commission noted that the goal for Category (1) stations should be to rebuild their facilities to reasonably replicate the station’s coverage area and population served, similar to the standard applicable to full power and Class A stations. The Commission also stated that Category (1) stations should be eligible for reimbursement for costs

similar to full power and Class A stations to move and reconstruct the current facilities at a new site or tower location, including costs of equipment, professional services such as engineering, and tower and construction work. With no opposition from commenters, the Commission thus affirms its conclusions and find that, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1) stations are eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations. The Commission continues to believe that only a very small number of stations are likely to be included in this category, and therefore the Commission does not believe the reimbursement of these stations is likely to constitute a significant portion of payments to FM stations from the Reimbursement Fund.

55. The Commission further adopts its proposals with respect to specific types of reimbursable equipment costs for Category (1) stations. Specifically, the Commission finds that examples of reimbursable equipment costs that could be reasonably incurred include transmitters, antennas, coaxial cable or wave guides, and associated equipment needed to reasonably replicate the service being lost. The Commission also finds that existing equipment should be reused as appropriate and that, to the extent that existing equipment cannot be reused, new equipment be reimbursable if needed to reasonably replicate service and coverage area. Additionally, the Commission finds that the costs of engineering to determine what technical facilities are needed to replace existing service at a new site should be considered reimbursable expenses, as well as transportation costs of physically moving equipment to a new site or new location on a tower and any engineering costs associated with the move. Finally, the Commission adopts its proposal not to reimburse FM stations for equipment that is used solely to emit transmissions that are not “radiotelephone emissions intended to be received by the general public,” such as Traffic Message Channels and digital metadata. No commenter disagrees with these proposals.

56. The Commission finds that expenses related to STLs are eligible for reimbursement in certain circumstances. In the *NPRM*, the Commission initially proposed not to reimburse FM stations for the costs of STLs and related equipment. NAB urges the Commission to permit the reimbursement of STL expenses in light of the fact that, unlike television

stations, FM stations will not change channels but will, in some cases, be forced to change locations, necessitating readjustment of STL facilities. Although the Commission concludes that stations utilizing microwave STL links should ordinarily be able to reuse their transmission and reception equipment and antennas, the Commission finds that there may be certain limited instances where reimbursement may be appropriate, such as where FM stations incur expenses due to a change in the FM station’s antenna location. The Commission directs the Media Bureau to reimburse reasonably incurred expenses on a showing that existing STL facilities could not be adapted for use at the new tower site and that their unsuitability is due to the specific relocation of the antenna and not the repack generally. The Commission distinguishes this situation from the use of STLs in the context of full power and Class A services. In those situations, the issue addressed by the Commission in the *Incentive Auction R&O*, and reaffirmed herein, is whether a station may be reimbursed for non-comparable equipment in lieu of a displaced secondary service that is not itself eligible for reimbursement, whereas here the Commission anticipates replacement of existing equipment due to a location change.

57. *Category (2) Stations.* The Commission concludes that Category (2) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, the Commission stated its belief that it is also in the public interest to develop a similar standard for eligible expenses for reimbursement of Category (2) stations. The Commission noted that Category (2) stations could reasonably incur costs that are related to their need to temporarily dismantle equipment or modify their physical facilities, for example, costs of equipment, professional services such as engineering, and tower and construction work, similar to the costs incurred by full power and Class A stations. Additionally, the Commission observed that, similar to Category (1), the service disruptions associated with these costs are likely to be significant in magnitude, but the number of stations incurring such costs is likely to be very small, and payments to such stations from the Reimbursement Fund will likewise be relatively small compared to total reimbursements for FM stations. With no opposition from commenters, the Commission thus affirms these conclusions and adopt its proposal that, if sufficient funds are available in the Reimbursement Fund to fully reimburse

FM stations, Category (2) stations should be reimbursed for up to 100 percent of eligible costs similar to full power and Class A stations.

Interim Facilities—Category (3) Stations

58. The Commission adopts its proposal that Category (3) stations be reimbursed for the cost of constructing new auxiliary facilities or upgrading existing auxiliary facilities to maximize signal coverage. The Commission observed in the *NPRM* that, in the full power and Class A reimbursement program, the costs of interim facilities are reimbursed in the same manner as other costs incurred for a station to change channels, and the Commission stated that the Commission would apply the same approach to FM stations. This would permit FM stations to continue broadcasting while their primary facilities are off the air due to the need to protect tower personnel working on modifications related to the reorganization of broadcast television spectrum. Reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work. No commenter disagrees with its proposal.

59. The Commission adopts its tentative conclusion that it is reasonable for there to be some temporary disruption of FM service to permit construction work or maintenance on a collocated, adjacent, or nearby station. FM stations regularly power down or remain silent for temporary periods to accommodate tower or antenna work and transmitter maintenance, and because of this the Commission stated that it is appropriate to reimburse costs for interim facilities only if they are needed to avoid service interruptions that would otherwise exceed ordinary construction or maintenance requirements. The Commission further adopts its tentative conclusion that operating from interim facilities does not require service that is identical to the station’s primary service, as indicated by the REA’s requirement that the Commission considers what expenses “reasonably minimize” disruption of service, rather than the Spectrum Act’s mandate to reimburse expenses resulting from a channel change. There was no opposition in the record to these particular conclusions.

60. However, the Commission rejects the proposal in the *NPRM* to apply a graduated priority system to reimburse Category (3) stations that would have linked the length of service disruption avoided to the level of reimbursement eligibility. In the *NPRM*, the Commission tentatively concluded that Category (3) FM stations should qualify

for maximum reimbursement on a graduated scale, with those stations off the air longest qualifying for the greatest percentage of reimbursement, because the Commission believed it would preserve finite funds for the most significant instances of service disruption. NAB and NPR strenuously oppose this proposal and dispute its tentative conclusion that the longer the lost airtime, the more service disruption and, thus, the greater justification for reimbursement for the construction of permanent auxiliary facilities. NAB labels the scaled reimbursement proposal as arbitrary and capricious, while NPR asserts that many stations, especially noncommercial educational (NCE) stations, would forego installation of interim facilities if reimbursed for only half the cost. The Commission shares the concerns expressed regarding this proposal, and the Commission does not adopt it.

61. Instead, the Commission will allow all Category (3) stations whose service is subject to more than a reasonably minimal disruption, as defined below, for more than a *de minimis* amount of time (discussed in paragraph 80 below) to be reimbursed for their reasonably incurred costs to the same extent as Category (1) and (2) stations. If the \$50 million fiscal year 2018 allocation for FM stations should prove insufficient to fully reimburse all categories of FM station claimants, then the Media Bureau will allocate funds in the same manner among all FM claimants in all three categories, for instance by allocating the same percentage of funds to stations in all three categories. Although the Commission has agreed with NAB and NPR that funds for reimbursement may exceed the \$50 million specifically earmarked for FM stations in fiscal year 2018, it is too soon to know whether any additional funds will be available or be sufficient to provide 100 percent reimbursement to all FM stations, particularly given the prioritization of full power and Class A stations and MVPDs with respect to fiscal year 2019 funds. Should additional fiscal year 2019 funds be available for reimbursement of FM stations, the Commission directs the Media Bureau to distribute those funds in the same manner among all FM station categories.

62. NPR asks the Commission to clarify that those FM stations able to seek reimbursement for interim facilities should not be limited to stations forced to go off air with their regular facilities, but should also include stations forced to reduce power to the point that they cannot cover 80 percent of their normal covered area or population. The

Commission concurs with NPR that reimbursable interim facilities need not be limited to FM stations forced to go off air completely during repack-related work. In determining what would constitute “reasonably minimiz[ing] disruption of service” with respect to Category (3) stations, the Commission observed in the *NPRM* that transmissions from interim facilities would not exactly replicate the areas or populations covered from the licensed transmitter site. The Commission therefore proposed that 80 percent of an FM station’s coverage area or covered population should be replicated by the interim facility in order to constitute substantial interim coverage meeting the “reasonably minimiz[ing] disruption of service” standard. This was based on Commission precedent in other contexts holding that, when a rule requires provision of a certain strength signal to an entire community, provision of that signal strength to 80 percent or more of either the area or the population of the community is considered to be substantial compliance with the rule. NAB, in its comments, prefers a standard under which only a station that can cover *both* 80 percent of its full-service covered population *and* 80 percent of its full-service covered area would be deemed to have a minimal disruption of service and, thus, be ineligible for reimbursement. Under NAB’s modification to its proposal, any station unable to achieve either coverage standard would be eligible to be reimbursed for interim facilities.

63. The Commission is convinced by NAB that if an FM station that must reduce power to accommodate repack work can still achieve, from its primary facility or an existing auxiliary facility, both 80 percent or more of its normal population coverage and 80 percent or more of its normal area coverage, its service will be considered to be a reasonably minimal disruption of its service, and therefore such a station will not be deemed eligible for reimbursement to construct interim facilities. Thus, an FM station that would lose over 20 percent of either its normal covered population or its normal coverage area as a result of repack-related work will be eligible for reimbursement to construct or improve interim facilities to achieve both coverage benchmarks. The Commission is persuaded by NAB’s argument that radio is in large part an out-of-home medium that relies on mobile listeners, and that covered population does not always accurately represent a radio station’s listenership, especially during morning and evening “drive time”

periods. The Commission therefore believes that NAB’s modification to its proposal more fully takes into account the adverse effects on an FM station’s service caused by repack-related tower work, and the Commission therefore modify its proposal as suggested by NAB.

64. When evaluating the sufficiency of interim facilities, the Commission is similarly persuaded that its original proposal to use coverage benchmarks, that is, to reimburse for the costs of the interim facility only if it is able to achieve either 80 percent of the station’s full-service covered population or 80 percent of its full-service covered area, is not the most reasonable approach. Both NAB and NPR note that there will likely be situations in which an FM broadcaster affected by repack work will not have the ability to locate an interim site that would achieve 80 percent of the main facility’s population or area coverage. This could be due to the time available for repack-related construction work, lack of suitable sites from which to maximize signal coverage, or other factors. Moreover, the Commission believes that a temporarily displaced FM broadcaster has the incentive to optimize interim service based on coverage area, covered population, and availability of auxiliary sites, as well as to minimize its time off air or operating with reduced facilities, and that this incentive is in line with Congress’s expressed desire to minimize FM service disruption. The Commission thus expects that an affected licensee will attempt to find an interim site that maximizes signal coverage and minimizes time off air to the extent possible in the time allotted. The Commission therefore does not adopt its proposal to require that the interim facility meet a minimum amount of area or population coverage in order to qualify for interim facility cost reimbursement. The Commission instead will reimburse FM broadcasters forced to construct new or improve existing interim facilities during repack work for interim facilities that (1) are operating during the time the station’s main facility is off air or operating at reduced power due to repack-related construction for a television station, and (2) provide greater signal coverage than existing facilities can provide during such construction. To demonstrate this, the licensee must submit contour maps demonstrating that the interim facility for which reimbursement is sought provides both greater population coverage and greater area coverage than the powered-down main facility.

65. Relatedly, in the *NPRM*, the Commission proposed that the

Commission will not reimburse for tower lease payments for interim facilities except during the period when the repacked television station's construction work is actively preventing the FM station from broadcasting from its primary facility and not for any period of time thereafter. NPR and NAB both seek clarification on this issue. Both argue that some owners of towers that are potential interim transmitter sites may require minimum lease periods longer than the actual time off air or operating with reduced power during repack-related construction, and that therefore "the Commission should provide public radio stations with the flexibility and resources they need by allowing reimbursement for a range of reasonable temporary tower leasing arrangements." Neither commenter provides concrete examples of such lessors; at most NPR states that "some public radio stations report" that potential lessors will require such minimum leases. The Commission concludes that reimbursing for minimum lease terms beyond the period of interim operations necessitated by repack work is not a cost "reasonably incurred . . . to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum." The Commission seeks to minimize any potential for manipulation by, for example, tower owners taking advantage of potential tenants' eligibility for REA reimbursement to impose unnecessarily expensive and/or lengthy lease terms. The Commission therefore adopts its initial conclusion that FM station operators should be reimbursed only for the period of interim operations necessitated by repack work.

66. The Commission does clarify, as suggested by NPR, that the Commission will reimburse for leasing interim facilities even if they are not used continuously during a repack-related construction period. NPR notes that given the uncertainties of tower work due to repacking, an FM station might not be required to reduce power or go off air for a continuous period of time, but might have multiple periods where interim operation is necessary, interspersed with periods of construction downtime in which the station can operate at full power from its primary site. In such instances, given that auxiliary facilities do not operate simultaneously with main facilities, the Commission will consider the time off air or operating with reduced facilities, for which the FM station may claim reimbursement for leasing interim facilities, to begin on the first day an FM

station must reduce power or shut down due to repacking work, and to run until the completion of repack-related tower work and the resumption of full-power operation from the primary site, without deducting any intervals during that time period during which the FM station is temporarily able to resume normal operation.

67. Additionally, the Commission refines its proposed definition of *de minimis* disruption of service with regard to interim facilities to mean time off air for less than 24 hours, or time off air confined to the hours of 12:00 midnight and 5:00 a.m. local time. In the *NPRM*, the Commission proposed to consider *de minimis*, and thus non-reimbursable, any stations forced off air due to repacking work for time periods that are (a) less than 24 hours; (b) during the hours of 10:00 p.m. to 6:00 a.m. local time; or (c) less than five non-peak broadcast hours per day. NAB counters that the Commission should consider as *de minimis* only time off air confined to no more than five overnight work periods between the hours of 12:00 midnight and 5:00 a.m. The Commission continues to believe that a station off the air for less than one day is unlikely to undergo the considerable time and expense of securing interim facilities for such a short period, and that such an interruption in service is consistent with normal station maintenance efforts. Although the Commission agrees with NAB's justification for a shorter overnight period, the Commission believes that a station that must only go off air during the least-listened to hours of the broadcast day—between midnight and 5:00 a.m.—has already reasonably limited its service disruption, no matter how many days it is off air, and thus should not require reimbursement for interim facilities to cover those hours. Moreover, the Commission finds that NAB presents no reasonable justification for limiting the *de minimis* definition to just five overnight periods, and so the Commission adopts as part of its *de minimis* definition time off air, for whatever period of days, limited to the hours of 12:00 a.m. to 5:00 a.m. local time. The Commission also eliminates the third prong (item (c) above) of its proposed definition. While no commenter specifically addressed this prong, the Commission finds that the term "non-peak hours" could be subject to a variety of interpretations and therefore may be difficult to administer.

68. Although its decision not to adopt the proposed graduated reimbursement scale for Category (3) stations reduces the significance of the total time an FM station's primary facilities must be off

air or operating with reduced power, the Commission nevertheless adopts its proposal to require an FM station seeking reimbursement to certify the amount of time it could not broadcast from its primary facility due to construction work on a repacked television station. As noted above, the Commission must have a mechanism to evaluate the total time needed to, among other things, lease interim facilities. The Commission further adopts its proposal that such certifications may be subject to audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse. The Commission therefore requires a repacked television station to provide, upon request, a statement or other information regarding the dates that work was done on a tower that impacted the FM station.

Channel Change Equipment

69. In the *NPRM*, the Commission expressed its expectation that no FM station will be forced to change its frequency as a result of the reorganization of broadcast television spectrum and, thus, tentatively concluded that expenses for retuning or replacing antennas or transmitters to accommodate channel changes will not be eligible for reimbursement. No commenter disputes its stated expectation, and the Commission therefore concludes that expenses for retuning or replacing antennas or transmitters for channel changes will not be eligible for reimbursement.

Equipment Upgrades and Reuse of Existing Equipment

70. The Commission adopts its tentative conclusion in the *NPRM* that the full power and Class A comparable facilities reimbursement standard cannot be applied in the same manner to FM stations in Categories (1) and (2) because the goal is to reasonably replicate the service type and area from a different location (Category (1)) or restore service using alternate equipment (Category (2)). In some cases, this can be accomplished using existing equipment or its equivalent, but in other cases this will require modified or differently configured equipment. The Commission concludes that Category (1) and (2) stations need not necessarily construct comparable facilities in order to be reimbursed, but should be reimbursed based on constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, using existing equipment if possible but new equipment as needed.

71. The Commission also adopts its proposal that, to the extent that a

Category (1) station must construct a new tower, the Commission would reimburse tower construction expenses only upon a showing that no space is available on other local towers that would enable it to reasonably replicate current service. NAB supports this proposal. Even with such a showing, the Commission sought comment as to whether and how the Commission should discount any reimbursement for tower construction costs, given that such “vertical real estate” carries with it the potential for revenue generation for the FM station, perhaps in substantial amounts. NAB opposes the possibility of a discount, labeling such revenues as “wholly speculative” and stating that any such revenues “could be rivaled by increased operating expenses associated with a new tower.” The Commission believes that, in the rare cases in which construction of a new tower is the only way to ensure the replacement of an FM station forced to relocate as a result of the television station repack, the decision whether to discount any reimbursement for tower construction costs should be made on a case-by-case basis, and the Commission directs the Media Bureau to make these determinations.

72. The Commission proposed to adopt a requirement, similar to that applied to full power and Class A stations, that FM stations reuse their own equipment to the extent possible rather than acquiring new equipment, and to justify why it is reasonable under the circumstances to purchase new equipment rather than modifying existing equipment. As noted, the Commission does not expect that FM stations will be required to change frequencies, so channel-related equipment modifications will not be required. Thus, the Commission believes it is reasonable to require FM stations seeking reimbursement to provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. No commenter objects to this proposal as applied to FM stations, and the Commission adopts this requirement.

73. Further, the Commission adopts its proposal to follow the Commission’s determination in the existing reimbursement program that the Commission should not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced. For example, the Commission would not reimburse an analog-only FM station to add hybrid digital capability, nor would the Commission reimburse an FM station for rule-compliant modifications that would expand its service area

beyond its current facilities, although it could seek reimbursement of costs needed to restore its original coverage area. NAB generally supports this policy, but states that “technological advances” may render previously optional features standard, thus making some upgrades “inevitable.” As discussed above, the Commission acknowledges that some stations may not be able to replace older, legacy equipment with precisely comparable equipment due to advances in technology. FM stations can seek reimbursement for the costs demonstrated to be necessary for constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, recognizing that the equipment may include some improved functionality. The Commission also clarifies, at NAB’s request, that maintaining an FM station’s digital (HD) capability on interim facilities will be reimbursable, as long as the station’s main facilities were broadcasting in HD as of April 13, 2017.

74. Finally, the Commission adopts its tentative conclusion that FM stations that receive or have received reimbursement of expenses from sources of funding other than the Reimbursement Fund, such as co-located television stations and/or tower owners providing reimbursement under contractual provisions, will not receive reimbursement for those expenses from the Reimbursement Fund. While the REA specifies that an FM station that has received reimbursement for “interim facilities” may not receive any reimbursements under the REA, the Commission believes that a similar prohibition should extend to an FM station that has received reimbursement from third parties for costs other than interim facilities. For stations that are reimbursed by a third party, there is nothing for the Commission to reimburse because the stations have already been made whole. The Commission also finds that a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the FM station under Section 511(l)(1)(A). NAB supports this tentative conclusion and other commenters did not address it. FM stations will be required to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA. This is consistent with its treatment of LPTV/translator stations, as discussed above. Also, consistent with

its approach for LPTV/translator stations, the Commission will require that FM stations first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA.

Lost Revenues

75. The REA, like the 2012 Spectrum Act, prohibits reimbursement of FM stations for “lost revenues.” The Commission adopts its proposal to define “lost revenues” for purposes of reimbursing FM stations similar to how the Commission defined it in the *Incentive Auction R&O*—specifically, “revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the reverse auction and the repacking process.” Under this definition, for example, the Commission would not reimburse a station’s loss of advertising revenues while it is off the air implementing either replacement or interim facilities, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement such a facility change. Commenters did not oppose its conclusions regarding lost revenues. This, again, is consistent with the definition of “lost revenues” adopted with regard to LPTV/translator stations, above.

Reimbursement Process

76. As the Commission stated in the *NPRM*, its goal is to adopt a reimbursement process for the newly eligible entities that is as simple and straightforward as possible to minimize both the costs associated with reimbursement as well as the burdens on affected parties and the Commission. At the same time, the Commission is committed to a process that is fair to all eligible entities and that maximizes the funds available for reimbursement by avoiding waste, fraud, and abuse.

77. As discussed below, the Commission adopts a reimbursement process for LPTV/translator and FM stations that is substantially similar to the process currently being used by the Commission to provide reimbursements to full power and Class A stations and MVPDs, and will make an effort to simplify the forms and certain processes and procedures where appropriate. As the Commission stated in the *NPRM*, the Commission believes that using a process and resources that have proven effective and that already are familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process. Several commenters urge the Commission to adopt procedures that

closely mirror those currently in use as they are well-understood by broadcasters as well as the consultants and attorneys they employ. At the same time, its goal is to create reimbursement forms and processes for use by the newly eligible entities that are as streamlined and easy to understand as possible to facilitate reimbursement for these entities.

Eligibility Certification and Estimated Expenses

78. As proposed in the *NPRM*, all newly eligible entities that believe they meet the eligibility requirements and intend to request reimbursement for eligible expenses must file a certification indicating that they intend to request reimbursement funds and meet the criteria for eligibility (Eligibility Certification), as well as a form that provides information on their existing broadcasting equipment and estimated costs eligible for reimbursement (Reimbursement Form). The Reimbursement Form will be a modified version of the reimbursement form used for full power and Class A stations in the existing program (FCC Form 2100, Schedule 399). The Media Bureau will release the form(s) and announce the deadline by which LPTV/translator and FM entities that intend to request reimbursement must file the Eligibility Certification and Reimbursement Form.

79. Entities must certify on the Eligibility Certification, *inter alia*, that they meet the eligibility criteria adopted in this proceeding and provide documentation or other evidence to support their certification. With respect to LPTV/translator stations, the Commission adopts its proposal that these stations must certify compliance with the minimum operating requirement adopted herein and provide supporting documentation, which could, by way of example, include evidence of programming aired by the station during the relevant period such as program guides, electric power bills, or other evidence showing that the station was transmitting during this time period. HC2 recommends that the Commission “be flexible with respect to such evidence, and accept evidence that reasonably verifies operation during the designated time period, such as internet access bills.” The Commission agrees with HC2. To facilitate the certification process while also limiting the burden on stations attempting to comply, the Commission find that examples of documentation above are illustrative and recognize that there may be other types of supporting evidence of LPTV/translator minimum operating

requirements. With respect to FM stations, the Commission adopts its proposal that such stations must certify that they were licensed and transmitting at the facility implicated by the reorganization of broadcast television spectrum on April 13, 2017, or had an application for a license to cover on file with the Commission on that date. As noted above, the Commission also require LPTV/translator and FM stations to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA.

80. Entities that certify that they meet the eligibility criteria may be subject to audits, data validations, site visits, or other verifications to substantiate the supporting evidence and representations with respect to eligibility, and such entities may be directed to make available any relevant documentation upon request from the Commission or its contractor. A false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules.

81. LPTV/translator and FM stations must also list their existing broadcasting equipment and the types of repacking-related costs they expect to incur on the Reimbursement Form. Similar to the reimbursement form used by full power, Class A, and MVPD entities, the Reimbursement Form for newly eligible entities will include a cost catalog that provides a list of the types of costs LPTV/translator and FM stations are most likely to incur together with a range of prices applicable to such expenses. The Media Bureau has sought comment on a proposed cost catalog of potentially reimbursable costs that may be incurred by LPTV/translator and FM stations as a result of the incentive auction and repacking process to facilitate the process for reimbursing these entities. The final version of the cost catalog will be embedded in the revised Reimbursement Form. Entities may select the estimates indicated on the form or, alternatively, may choose to provide their own estimates. The Commission note that some LPTV/translator and FM stations will have already incurred costs eligible for reimbursement by the time the rules adopted in this proceeding become effective and the Commission begin accepting Eligibility Certifications and Reimbursement Forms. As proposed in the *NPRM*, these entities may indicate on their Reimbursement Form their actual costs and provide their invoices, instead of providing estimates, for costs

already incurred before the Reimbursement Form is filed. Entities must also indicate on the form whether they will need to purchase new equipment in order to continue operating or whether they can reuse some of their existing equipment.

82. In response to the Commission’s invitation in the *NPRM* for comment on ways to streamline the reimbursement process for LPTV/translator and FM stations, NTA proposes that the Commission use a “Fast Track” approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement. NTA further proposes that stations that opt to use the proposed “Fast Track” approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment. While the Commission shares the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process, the Commission finds that the “Fast Track” proposal is not a feasible option. First, it is critical that the Commission obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that the Commission are not over-allocating for a particular entity and that the Commission has the information regarding the total demand on the Reimbursement Fund. It is only by having an accurate estimate of the total demand on the Fund that the Media Bureau can make reasoned allocation decisions and ensure a fair and equitable distribution of reimbursement funds. The Commission also notes that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. Section 511(m)(2) of the REA provides that “[t]he rulemaking completed under paragraph (1) shall include . . . procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” for reimbursement of full power, Class A, and MVPD entities under Section 6403(b) of the Spectrum Act. Second, although NTA’s proposal for a “Fast Track” contains few details, the intent of the proposal appears to be to avoid requiring entities that avail themselves of this approach from the necessity to file certain information and/or follow certain procedures that would otherwise apply. The Commission notes that the Commission cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility

Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, the Commission must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that the Commission have adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. As explained above, the Commission believe that it is critical to have estimates. Thus, upon consideration, the Commission cannot identify any filings or procedures that could be eliminated in a manner that would make a “Fast Track” achievable.

83. The Commission declines to treat non-profit entities differently from for-profit entities in the reimbursement process for newly eligible entities. NPR proposes that, in distributing reimbursement funds, the Commission should “prioritize the availability and timing of reimbursement for non-profit public radio stations (and possibly other non-profits), which have less ability to absorb or ‘front’ the cost” of activities needed to avoid time off-air or at reduced power during the transition. Its goal is to streamline and expedite its reimbursement process for all newly eligible entities, including the payment of initial and any subsequent allocations and the processing of reimbursement requests. The Commission expects all entities to be able to access reimbursement funds quickly once its reimbursement process is underway, thereby avoiding any need to prioritize the timing of allocations and/or reimbursement payments to non-profit or other entities. While the Commission stated its intention in the *Incentive Auction R&O* to issue NCE broadcasters initial allocations equivalent to a higher percentage of their estimated costs than commercial broadcasters due to the unique funding constraints faced by NCEs, the Commission does not believe a similar approach is warranted with respect to newly eligible entities. As noted above, many newly eligible entities will already have incurred eligible expenses by the time they can begin requesting reimbursement pursuant to the rules adopted in this proceeding. In addition, their average total expenses eligible for reimbursement is likely to be less than for full power stations. The Commission therefore believes it is less important that the Commission provide a higher initial allocation to NCE entities, or otherwise prioritize these entities in the reimbursement process, to ensure they can fund the modifications they must

make as a result of the repacking process.

Reimbursement Allocations

84. As proposed in the *NPRM*, once the Media Bureau completes its review of the Eligibility Certification and Reimbursement Form, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator and FM station. These funds will be available for the entity to draw down as expenses are incurred. The amount of the initial allocation, as well as the total amount allocated to each entity, will depend in part on the number of newly eligible entities that file an Eligibility Certification and the amount available for reimbursement for each type of entity from fiscal year 2018 funds. In the *NPRM*, the Commission noted that, in the context of the existing reimbursement process for full power and Class A stations and MVPDs, the Media Bureau determined the appropriate allocation amount based on the circumstances and information available from submitted Reimbursement Forms. Consistent with this approach, the Commission has directed the Media Bureau to make allocation decisions for stations eligible for reimbursement under the REA.

85. After the initial allocation of reimbursement funds, the Media Bureau may issue one or more subsequent allocation(s). As proposed in the *NPRM*, the timing and amount of these subsequent allocation(s) will depend in part on the fiscal year 2018 funds remaining in the Reimbursement Fund for each type of entity and the amount, if any, allocated from fiscal year 2019 funds, the eligible expenses entities have incurred, and the Commission’s goal in terms of the amount of eligible costs the Commission expect to be able to cover for each entity. As discussed above, fiscal year 2019 funds will be subject to prioritization of reimbursement for full power and Class A stations and MVPDs. The Commission directs the Media Bureau to allocate fiscal year 2019 funds consistent with this prioritization approach.

86. NAB argues that the FCC should not hold back funds for multiple allocations unless there is reason to believe that the available funds will be insufficient. Instead, NAB proposes that, as soon as the Commission receives cost estimates and assuming sufficient funds are available, the Commission should immediately make 80 percent of estimated costs available to all eligible entities and should consider making even more available in its initial allocation unless there is a concrete reason to believe the available funds

will be insufficient. The Commission declines at this time to adopt NAB’s proposal. The Commission believes the best approach is for the Media Bureau to determine initial allocation amounts after cost estimates are submitted and total demand on the Reimbursement Fund is assessed, consistent with its experience with the full power and Class A reimbursement program.

87. Similarly, the Commission believes the best approach is for the Media Bureau to determine the timing and number of any additional allocations, consistent with the approach the Commission have taken with respect to full power, Class A, and MVPD entities, based on prudent fund administrative practices, the amount of estimated expenses, the amount of funds drawn down, and the amount remaining in the Reimbursement Fund for each type of eligible entity.

Prioritization of Types of Costs

88. The Commission will permit entities to be reimbursed for both hard costs, such as new equipment and tower rigging, and soft costs, such as legal, engineering, and project management expenses, as proposed in the *NPRM*. In addition, the Commission will not prioritize hard costs over soft costs.

89. The Commission noted in the *NPRM* that the total amount of reimbursement funds available to LPTV/translator or FM stations may not be sufficient to cover all eligible expenses at the end of the program and it may therefore be necessary to establish a prioritization scheme for reimbursing eligible expenses. The Commission sought comment on whether the Commission should, at least with respect to initial allocations, prioritize the payment of certain costs, such as certain equipment and engineering expenses, over other types of expenses, such as project management fees. While some commenters who address this issue support prioritization of hard costs over project management and other soft costs, others oppose such an approach. The Commission is persuaded by NPR’s position that “soft costs” such as project management fees may be just as important to stations as “hard costs” and should be reimbursed in the same manner and priority as such costs, and find no basis in the current record, nor any statutory direction, to prioritize hard costs over soft costs. Thus, the Commission concludes that the Commission will reimburse all costs, hard and soft, in the same manner in order to allow entities to determine how best to manage their reimbursement funds in light of their own transition needs.

Procedures for Submission of Invoices, Financial Forms, and Payments

90. As proposed in the *NPRM*, the Commission will use substantially similar procedures for the submission of reimbursement requests and the issuance of reimbursement payments to the newly eligible entities as the Commission use in the existing full power and Class A station reimbursement program. Specifically, LPTV/translator and FM stations must submit requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission's LMS database. After an allocation is made, stations will be able to draw reimbursement payments from the U.S. Treasury as they incur expenses eligible for reimbursement and submit invoices that are approved for payment.

91. As also proposed in the *NPRM*, the Commission will revise versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations. These procedures are set forth in the *Financial Procedures PN*. At the beginning of the reimbursement process, LPTV/translator and FM stations will be required to use a procedure and form similar to its existing FCC Form 1876 to submit payment instructions to the Commission and to provide bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module. Entities will be able to track reimbursement payments using the Auction Payments component of the CORES Incentive Auction Financial Module.

92. Prior to the end of the reimbursement period, entities must provide information regarding their actual and, if applicable, any remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs. If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund. In addition, if an overpayment is discovered, even after the final allocation has been made, the entity receiving an overpayment must return the excess to the Commission.

93. As the Commission proposed in the *NPRM*, the Commission will simplify and streamline the forms to be used by newly eligible entities to facilitate and expedite the reimbursement process. NPR urges the Commission to incorporate specific features to make the forms easier to use, including avoiding character or word count restrictions and including print and "cut and paste" functionality in the web-based forms. The Commission plans to pay close attention to these and other suggestions for improving its processes as the Commission develop forms and procedures for use by newly eligible entities. The Commission is also mindful, however, of those commenters who urge the Commission to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms. Its goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary changes that could negatively impact users.

Measures To Prevent Waste, Fraud, and Abuse

94. As proposed in the *NPRM*, the Commission establishes strong measures to protect against waste, fraud, and abuse with respect to disbursements from the Reimbursement Fund for newly eligible entities. For example, entities must document their actual expenses, including by providing all relevant invoices and receipts, and retaining other relevant records to substantiate their certifications and reimbursement claims. Similar to the existing requirement for full power, Class A, and MVPD entities, LPTV/translator and FM stations seeking reimbursement must retain all relevant documents pertaining to construction or other reimbursable changes or expenses for a period ending not less than 10 years after the date on which the entity receives final payment from the Reimbursement Fund.

95. The Media Bureau will develop a Reimbursement Form for use by LPTV/translator and FM stations that will contain certifications similar to those on the Reimbursement Form used by full power, Class A, and MVPD entities. Thus, an LPTV/translator or FM station seeking reimbursement must certify, *inter alia*, that it believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, it will use all money received from the Reimbursement Fund only for expenses it believes in good faith are

eligible for reimbursement, and it will comply with all policies and procedures related to reimbursement.

96. As noted above, the Commission will conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse and to maximize the amount of money available for reimbursement. The Commission disagrees with HC2's contention that audits or other validations by a third-party are unnecessary to substantiate certifications such as the minimum operating requirements for LPTV/translator stations. The Commission has previously determined that, with respect to the incentive auction reimbursement program, "audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement." Based on its experience administering the reimbursement program for full power and Class A stations and MVPDs, the Commission continues to believe that audits, site visits, and other validation mechanisms are essential for preventing waste, fraud, and abuse. The Commission reminds stations that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission's rules. If the Commission discovers evidence of intentional fraud, the Commission will refer the matter to the Commission's Office of Inspector General or to law enforcement for criminal investigation, as appropriate.

97. Finally, to ensure transparency with respect to the Reimbursement Fund, the Commission will make eligibility and actual cost information available to the public as well as information regarding Reimbursement Fund disbursements. This is similar to the process used with respect to full power, Class A, and MVPD reimbursement.

Other Issues

98. *Reimbursement of Indirect Expenses for Full Power and Class A Stations.* The Commission declines a suggestion put forth by Cox and supported by NAB to permit full power television stations to seek reimbursement under the new REA provisions for costs that are not the result of their own channel change, but instead are the result of a collocated station's repacking activities. The *NPRM* did not propose to revisit issues with respect to reimbursement of full power and Class A stations. The Commission therefore dismisses this request because

it is beyond the scope of the *NPRM*. On alternative and independent grounds, the Commission notes that Cox has in any event provided no basis for revisiting its prior decision, which is compelled by its reading of the statute. Cox and NAB acknowledge that the Commission has previously declined to allow reimbursement for stations that incur indirect expenses due to repacking activities for other stations based on concerns over potential exhaustion of available repacking funds. However, because in some cases a repacked station may not have an express contractual obligation to reimburse collocated stations for repack expenses, Cox maintains that there exists an “inequitable situation where some full-power television stations can have their direct repack expenses reimbursed, whereas other stations must pay for their costs themselves, depending on when their tower leasing agreements were drafted.” Although the Commission is sensitive to the fact that it is possible that some stations may incur expenses as a result of a repacked station implementing its post-auction channel facilities, consistent with the Spectrum Act, the Commission only allows reimbursement of a television station’s own repack expenses, that is, expenses “to relocate its television service from one channel to the other.” In the scenario posited by Cox, the expenses are not incurred by the station “to relocate its television service from one channel to the other,” but instead are incurred because of a different station’s repacking activities. Thus, the Commission does not have statutory authority to permit reimbursement of such expenses. As the Commission said in the *Incentive Auction R&O*, the Commission allow reimbursement to the repacked station in this scenario if it had an express contractual obligation to pay the expenses of other collocated stations as of the date of release of the *Incentive Auction R&O*.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (“IRFAs”) were incorporated in the Notice of Proposed Rulemaking (“NPRM”). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFAs. Because the Commission amended the rules in this *R&O*, it included this Final Regulatory Flexibility Analysis (“FRFA”) which conforms to the RFA.

Need for and Objectives of the Rules

In the Report and Order, the Commission adopted rules to implement Congress’s directive in the 2018 Reimbursement Expansion Act (REA) that it reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission’s broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund (Reimbursement Fund) and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. The Report and Order adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities, and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

As proposed in the NPRM, the Commission adopts a process to reimburse the newly eligible entities that is substantially similar to that which it currently uses to reimburse full power and Class A stations and multichannel video programming distributors (MVPDs) as established in the Incentive Auction R&O. Specifically, the Commission:

- Concludes that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs, and that the Commission will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM entities.

- Conclude that LPTV/translator stations are eligible for reimbursement if: (1) They filed an application during the Commission’s Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.

- Conclude that the Commission will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station’s Special Displacement Window application.

- Conclude that full power and low power FM stations and FM translators that were licensed and transmitting on

April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. The Commission finds that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station’s facilities.

- Conclude that the Commission will reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, temporarily or permanently modify facilities, or purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.

- Conclude that the Commission will not reimburse LPTV/translator or FM stations for costs for which they have already received reimbursement funding from other sources.

- Require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.

- Find that, after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds to be available for draw down as the entities incur expenses. The Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund.

- Conclude that the Commission will use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and use the same procedures to provide reimbursement payments to these newly eligible entities.

- Discuss the measures the Commission will take to protect the Reimbursement Fund against waste, fraud, and abuse.

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

No formal comments were filed on the IRFA but some commenters raised

issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the Report and Order and in the FRFA.

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

No comments were filed on the IRFAs by the Small Business Administration.

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

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 rules adopted herein. 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.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or less. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 819 establishments operated with less than 500 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

Audio and Video Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-

type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems. The SBA has established a size standard for this industry, in which all firms with 750 employees or less are small. According to U.S. Census data for 2012, 492 audio and video equipment manufacturers were operational in that year. Of that number, 476 operated with fewer than 500 employees. Based on this Census data and the associated size standard, the Commission concludes that the majority of such manufacturers are small.

Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: Those having \$38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, the Commission concludes that the majority of television broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,619 stations and the number of commercial FM radio stations to be 6,754, for a total number of 11,373. Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,135. NCE stations are non-profit, and therefore considered to be small entities. Therefore, the Commission estimates that the majority of radio broadcast stations are small entities.

Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having \$38.5 million or less in annual receipts. The Commission has estimated the number of licensed low power FM stations to be 2,172. In addition, as of December 31, 2018, there were a total of 7,952 FM translator and FM booster stations. Given that low power FM stations and FM translators and boosters

are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

The Commission notes again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, its estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$38.5 million or less in annual receipts. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data the Commission concludes that a majority of firms that operate television stations are small. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission’s estimate, therefore, likely overstates the

number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

In addition, the Commission has estimated the number of licensed NCE television stations to be 388. These stations are non-profit, and therefore considered to be small entities.

There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *R&O* adopts the following revised reporting or recordkeeping requirements. To implement the REA, eligible entities must file forms to demonstrate their eligibility and estimated costs for reimbursement. Specifically, the Report and Order states that entities will use revised versions of the forms currently being used by full power, Class A, and multichannel video programming distributors (MVPD) entities from the incentive auction for purposes of reimbursing eligible LPTV/translator and FM stations. The Report and Order also states that the Commission will use the procedures to provide reimbursement payments to these newly eligible entities that are similar to those it used for reimbursement in the incentive auction. For example, LPTV, TV translators, and FM stations will be required to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission’s Licensing and

Management System (LMS) database. In addition, LPTV/translator and FM stations that seek reimbursement will use a procedure and form similar to the existing FCC Form 1876 to provide financial information to the Commission in order to receive reimbursement payments and will file electronically in the CORES Incentive Auction Financial Module.

These new reporting requirements will not differently affect small entities.

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

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

The Report and Order adopts rules to implement the REA. The rules are designed allow all entities, including small entity broadcasters, to seek reimbursement in a manner that is streamlined and the least burdensome. The Report and Order adopts a reimbursement process for newly eligible LPTV/translator and FM stations that is substantially similar to the current reimbursement process. The Commission concludes that using a process and resources that have proven effective and that are already familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process for newly eligible entities. At the same time, the Commission indicated in the item that it will simplify and streamline the forms to be used by newly eligible entities, to the extent possible, in order to expedite and facilitate the reimbursement process. Some commenters urged the Commission to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms. As the Commission stated in the item, its goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary

changes that could negatively affect users.

The Commission considered and ultimately rejected a proposal that it use a “Fast Track” approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement. NTA proposed that stations that opt to use the proposed “Fast Track” approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment. While the Commission shared the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process, it concluded that the “Fast Track” proposal is not a feasible option because it is critical that it obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that is not over-allocating for a particular entity and that we have the information regarding the total demand on the Reimbursement Fund. The Commission also note that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. In addition, although NTA’s position on this is unclear, the Commission cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, the Commission must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that it has adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. Thus, upon consideration, the Commission could not identify any filings or procedures that could be eliminated in a manner that would make a “Fast Track” achievable.

Report to Congress

The Commission will send a copy of the *R&O*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.
Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

- 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

- 2. Add § 73.3701 to read as follows:

§ 73.3701 Reimbursement under the Reimbursement Expansion Act.

(a) *Definitions*—(1) *Eligibility Certification/Reimbursement Form*. For purposes of this section, the term *Eligibility Certification/Reimbursement Form* means the form(s) developed by the Media Bureau for processing reimbursement requests under the Reimbursement Expansion Act.

(2) *FM station*. For purposes of this section, the term *FM station* means an “FM broadcast station” as defined in § 73.310.

(3) *Incentive Auction*. For purposes of this section, the term *Incentive Auction* means the broadcast television spectrum incentive auction and repacking process conducted under section 6403 of the Spectrum Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(4) *Licensed*. For purposes of this section, the term *licensed* means a station that was licensed or that had an application for a license to cover on file with the Commission on April 13, 2017.

(5) *Low power television station*. For purposes of this section, the term *low power television station* means a low power television station as defined in 47 CFR 74.701.

(6) *Predetermined cost estimate*. For purposes of this section, *predetermined cost estimate* means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(7) *Reimbursement Expansion Act or REA*. For purposes of this section, the term *Reimbursement Expansion Act or REA* means Division E, Financial Services & General Appropriation Act, 2018, Title V Independent Agencies, Public Law 115–141, Section 511 (codified at 47 U.S.C. 1452(j)–(n)) adopted as part of the Consolidated

Appropriations Act, 2018, Public Law 115–141 (2018).

(8) *Reimbursement period*. For purposes of this section, *reimbursement period* means the period ending July 3, 2023, pursuant to section 511(j)(3)(B) of the REA.

(9) *Replacement translator station*. For purposes of this section, the term *replacement translator station* means analog to digital replacement translator stations authorized pursuant to 47 CFR 74.787(a)(5).

(10) *Spectrum Act*. For purposes of this section, the term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(11) *Special Displacement Window*. For purposes of this section, the term *Special Displacement Window* means the displacement application filing window conducted April 10, 2018 to June 1, 2018 for low power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process.

(12) *Transmitting*. For purposes of this section, the term *transmitting* means a low power television station, TV translator station, or replacement translator station operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(13) *Reimbursement Fund*. For purposes of this section, the *Reimbursement Fund* means the additional funding established by the REA.

(14) *TV translator station*. For purposes of this section, the term *TV translator station* means a “television broadcast translator station” as defined in 47 CFR 74.701.

(b) *Eligibility for reimbursement*. Only the following entities are eligible for reimbursement of relocation costs reasonably incurred:

(1) *Low power television stations*. Low power television stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(2) *TV translator stations*. TV translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not

less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(3) *Replacement translator stations*. Replacement translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(4) *FM station*. FM stations licensed and transmitting as of April 13, 2017, that experienced, at the site at which they were licensed and transmitting on that date, a disruption of service as a result of the reorganization of broadcast television spectrum under 47 U.S.C. 1452(b).

(c) *Reimbursement process*—(1) *Estimated costs*. (i) All entities that are eligible to receive reimbursement will be required to file an estimated cost form providing an estimate of their reasonably incurred costs and provide supporting documentation.

(ii) Each eligible entity that submits an estimated cost form will be required to certify on its Eligibility Certification/Reimbursement Form *inter alia*, that:

(A) It is eligible for reimbursement;

(B) It believes in good faith that it will reasonably incur all of the estimated costs that it claims are eligible for reimbursement on the estimated cost form;

(C) It will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for reimbursement;

(D) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund;

(E) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred;

(F) It will file all required documentation of its relocation expenses as instructed by the Media Bureau;

(G) It has not received nor does it expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA; and

(H) Low power television stations, TV translator stations, and replacement translator stations must certify compliance with the minimum operating requirement set forth in paragraph (b)(1), (2), or (3) of this section.

(I) FM stations must certify that they were licensed and transmitting at the facility implicated by the Incentive Auction on April 13, 2017.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) *Final Allocation Deadline.* (i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the Reimbursement Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the “Final Allocation Deadline”).

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) *Final accounting.* After completing all construction or reimbursable changes, eligible entities that have received money from the Reimbursement Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) *Documentation requirements.* (i) Each eligible entity that receives payment from the Reimbursement Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund.

(ii) Each eligible entity that receives payment from the Reimbursement Fund must make available all relevant

documentation upon request from the Commission or its contractor.

[FR Doc. 2019–05598 Filed 3–25–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID: PHMSA–2018–0086]

Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Announcement of enforcement discretion.

SUMMARY: PHMSA is announcing its exercise of enforcement discretion with respect to portions of its regulations that pertain to farm taps. Pursuant to the exercise of enforcement discretion announced in this document, PHMSA will not take enforcement action against operators who forego the new maintenance and inspection requirements established in March 2017 and instead mitigate any future risk associated with farm taps through compliance with the existing Distribution Integrity Management Program (DIMP) regulations. This will provide regulatory flexibility to pipeline operators while at the same time maintaining an equivalent level of safety.

DATES: This action is effective March 26, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information or questions, contact Chris McLaren at chris.mclaren@dot.gov or 281–216–4455.

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2017, PHMSA published in the *Federal Register* a final rule titled, “Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes.”¹ This final rule, effective March 24, 2017, modified 49 CFR 192.1003 by adding an exemption from the distribution integrity management program (DIMP) regulations for an individual service line directly connected to a transmission, gathering,

or production pipeline. Additionally, PHMSA added maintenance and inspection requirements in a new section (§ 192.740) to ensure the safety of pressure regulating, limiting, and overpressure protection for individual service lines directly connected to production, gathering, or transmission pipelines.

Individual service lines directly connected to transmission, gathering, or production pipelines are also called “farm taps.” Farm taps are typically located in rural areas, and provide gas to a customer. Prior to the final rule, PHMSA worked with stakeholders to best identify how to address risk with farm taps in an appropriate and cost efficient manner. The result of this work is contained in the final rule with the exemption of farm taps from the DIMP regulations in § 192.1003(b), and the addition of § 192.740, which requires certain maintenance and inspection tasks be performed on a periodic basis.

On September 18, 2017, the American Gas Association (AGA) sent to PHMSA a Regulatory Impact Position Paper titled, “Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes Final Rule.” In its paper, AGA encourages PHMSA to consider revising §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. On November 9, 2017, AGA, the American Petroleum Institute, and the Interstate Natural Gas Association of America submitted joint comments to DOT’s Regulatory Reform Docket, which sought comment on whether existing regulations may be repealed, replaced, or modified without compromising safety (e.g., for burdening domestic energy production, for imposing costs that exceed benefits, or for eliminating jobs or inhibiting job creation).² The joint comments endorsed the recommendations of the AGA paper, and included that paper as an appendix.

AGA believes that PHMSA significantly underestimated the costs associated with the new farm tap inspection requirements. AGA also questions the pipeline safety enhancements attributed to the new regulatory requirements, noting that operators have continuously monitored farm taps for heightened levels of risk under their DIMP plans since 2011, when the DIMP rule became effective. AGA also notes that operators currently are obligated to periodically perform leak surveys on farm taps under

¹ 82 FR 7972, also available in Docket No. PHMSA 2013–0163 at www.regulations.gov.

² See <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1504>.

§ 192.723(b)(2), and these activities provide operators an opportunity to verify their functionality and identify any existing abnormal operating conditions.

As part of DOT's regulatory review process, PHMSA is considering AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. AGA contends that this action would provide industry with cost savings, while simultaneously improving pipeline safety by allowing operators to mitigate any future risk associated with farm taps through their DIMP plans. PHMSA believes that the two regulatory sections provide equivalent levels of safety.

II. Announcement of Exercise of Enforcement Discretion

PHMSA is exercising enforcement discretion while it considers AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. PHMSA will not take any enforcement action relating to violations of § 192.740 with respect to operators that choose to include farm taps in their DIMP plans, and will instead require that such operators comply with the existing DIMP regulations of 49 CFR part 192, subpart P. This exercise of enforcement discretion provides operators with the flexibility to choose to either address the safety of farm taps under the current regulatory framework of §§ 192.740 and 192.1003(b), or under the regulatory framework that was in place prior to March 24, 2017, by including farm taps in their DIMP. Operators who choose the second option should continuously monitor their farm taps for heightened levels of risk under their DIMP. All operators of farm taps, moreover, should comply with other regulatorily required programs (e.g., §§ 192.603(c)(4) Abnormal Operations; 192.613(a) Continuing Surveillance; and, 192.617 Investigation of Failures).

PHMSA is issuing this document while it continues to evaluate and analyze the technical aspects of this matter. This exercise of enforcement discretion will remain in effect until further notice. Nothing in this document prohibits PHMSA from rescinding this document and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Furthermore, this document does not relieve operators from compliance with any other applicable provisions of the pipeline safety regulations.

Issued in Washington DC on March 20, 2019, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2019-05677 Filed 3-25-19; 8:45 am]

BILLING CODE 4919-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XF559

Fisheries of the Exclusive Economic Zone Off Alaska; Essential Fish Habitat Amendments; Correction

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

ACTION: Fishery management plan amendments; notification of correction.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing the correction of Amendment 115 to the fishery management plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP). NMFS is correcting the numbering of the sections in Amendment 115 describing species-specific essential fish habitat (EFH).

DATES: The correction to Amendment 115 is effective March 26, 2019.

ADDRESSES: The corrected FMP may be obtained at <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

On July 5, 2018, NMFS announced the final approval of EFH amendments to five of its six FMPs, including the BSAI Groundfish FMP (83 FR 31340), in effect as of May 31, 2018 (July 2018 notification) and published availability information for the amendments. These amendments updated the description and identification of EFH based on the best scientific information available to comply with the regulatory requirement to review and update EFH every five years. Species-specific EFH sections are numbered in Section 4.2.2 of the BSAI Groundfish FMP; however, a number for the dusky rockfish section was inadvertently left out. This correction provides a number for the dusky

rockfish section, and rennumbers subsequent species sections sequentially. No regulations were promulgated as part of the July 2018 notification, therefore no regulatory changes are needed to effect this correction.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and opportunity for public comment on this correction, as notice and comment would be unnecessary and contrary to public interest. This notification announces the correction of the unintentional omission of a number for the dusky rockfish EFH section, as described above, and does not change operating practices in the fisheries. Therefore, in order to avoid any negative consequences that could result from this error, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This correction notification makes only minor change to the numbers of the species-specific EFH sections and does not change the operating practices in the fisheries. For these reasons, the AA finds good cause to waive the 30-day delay in the effective date of this action.

Description of Correction

In the BSAI Groundfish FMP Amendment 115, described in the July 2018 notification (see **ADDRESSES** for availability), the section for dusky rockfish on page 10 is numbered as follows:

4.2.2.2.20 Dusky Rockfish

Species-specific EFH sections following dusky rockfish are corrected to be numbered sequentially up to the last species section numbered 4.2.2.2.30 for yellow Irish lord, which was numbered 4.2.2.2.29 in the text described in the July 2018 notification.

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

Dated: March 19, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019-05599 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 180831813–9170–02]****RIN 0648–XG911****Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska**

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2019 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 21, 2019, through 1200 hours, A.l.t., May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance

with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2019 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 27,306 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the GOA (84 FR 9416, March 14, 2019). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the B seasonal apportionment for Statistical Area 620 by 1,494 mt to account for the underharvest of the TAC in Statistical Area 630 in the A season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised B seasonal apportionment of pollock TAC in Statistical Area 620 is 28,800 mt (27,306 mt plus 1,494 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2019 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 28,600 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 20, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 21, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–05719 Filed 3–21–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 58

Tuesday, March 26, 2019

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

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[190225160–9160–01]

RIN 0691–AA88

International Services Surveys: BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to renew reporting requirements for the mandatory BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons. This survey will apply to the 2018 calendar reporting year. This mandatory benchmark survey, conducted under the authority of the International Investment and Trade in Services Survey Act, covers the universe of transactions in insurance services and is BEA's most comprehensive survey of such transactions. For the 2018 benchmark survey, BEA proposes several changes in the data items collected and the design of the survey form.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5:00 p.m. May 28, 2019.

ADDRESSES: You can submit comments, identified by RIN 0691–AA88, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. For Keyword or ID, enter "EAB–2018–0001."

- *Email:* christopher.stein@bea.gov.

- *Fax:* Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, (301) 278–9507.
- *Mail:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233.
- *Hand Delivery/Courier:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608–0073, Attention PRA Desk Officer for BEA, via email at Robert_G_Sivinski@omb.eop.gov, or by fax at 202–395–7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; email christopher.stein@bea.gov or phone (301) 278–9189.

SUPPLEMENTARY INFORMATION: The BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons is a mandatory survey and is conducted once every five years by BEA under the authority provided by the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat.

2059, 22 U.S.C. 3101–3108, as amended), hereinafter, "the Act." The Act provides that data reported to BEA on this survey are confidential and may be used only for analytical and statistical purposes. Without prior written permission from the survey respondent, the data collected cannot be presented in a manner that allows individual responses to be identified. An individual respondent's report cannot be used for purposes of taxation, investigation, or regulation. Copies retained by BEA are exempt from legal process. Per the Cybersecurity Enhancement Act of 2015, a respondent's data are protected from Cybersecurity risks through security monitoring of the BEA information systems.

A response is required from persons subject to the reporting requirements of the BE–140, whether or not they are contacted by BEA, to ensure complete coverage of transactions in insurance services between U.S. persons (any individual or organization subject to the jurisdiction of the United States) and foreign persons.

In 2012, BEA established regulatory guidelines for collecting data on international trade in services and direct investment (77 FR 24373; April 24, 2012). This proposed rule, conducted pursuant to the Act, would amend regulations to require a response from persons subject to the reporting requirements of the BE–140, whether or not they are contacted by BEA.

The benchmark survey is intended to cover the universe of insurance transactions of U.S. insurance companies with foreign persons and is BEA's most comprehensive survey of such transactions. In nonbenchmark years, the universe estimates covering these transactions are derived from the sample data reported on BEA's BE–45 Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons. The BE–45 and the BE–140 collect similar information. BEA uses cutoff sampling for the BE–45, meaning that respondents must only report on the BE–45 if they have transactions that exceeded \$8 million in any one of the eight covered insurance transaction categories. The sample of reporters that file on a quarterly basis throughout calendar year 2018 will also be required to report on the 2018 BE–140 survey. BEA reconciles

the annual data from the BE-140 survey with the quarterly data reported on the BE-45 survey, by comparing quarterly to annual submissions that are typically completed using audited information.

The benchmark data, which includes data from respondents not subject to filing on an ongoing quarterly basis, will be used, in conjunction with quarterly data collected on the companion BE-45 survey, to produce estimates of insurance transactions for BEA's international transactions accounts (ITAs), national income and product accounts, and industry accounts. If this information was not collected on the BE-140 survey, BEA would need to expand the scope of the BE-45 quarterly survey by collecting additional data items and reducing reporting thresholds, resulting in an increased number of respondents and a measurable impact on the reporting burden each quarter. The data collected through the BE-140 are needed to monitor U.S. trade in insurance services, to analyze the impact on the U.S. economy and on foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

A full list of the insurance transactions covered by the BE-140 survey can be found in the regulatory text for new § 801.12 at the end of this document.

This proposed rule would amend 15 CFR part 801 by adding new § 801.12 to set forth the reporting requirements for the BE-140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

Description of Changes

The proposed changes would amend the regulations and the survey form for the BE-140 benchmark survey. These amendments include several changes in data items collected and the design of the survey form relative to the 2013 benchmark survey.

BEA proposes adding two items and modify two items on the benchmark survey form. The modifications are proposed in response to suggestions from data users and would allow BEA to more closely align with international guidelines and publish more information on U.S. trade in insurance services.

The following items would be added to the benchmark survey:

(1) *Mandatory questions to request additional information from*

respondents that have direct insurance sales and/or losses. Additional questions, applicable to reporters of direct insurance transactions on Schedule B of the survey, would be added to request an estimate of what percentage of these transactions were:

(1) Life insurance, (2) freight insurance, and (3) other direct insurance. To avoid imposing undue reporter burden, the estimates would be requested based on the reporter's knowledge of the U.S. operations, and would not be required to be sourced from company records at an individual transaction level.

(2) *A new schedule to collect information related to catastrophic losses from hurricanes and other significant natural disasters.* The 2018 BE-140 survey would collect information from reporters for a sample of up to 5 catastrophic events that took place during 2018. Catastrophic events would include events such as hurricanes, earthquakes, and wildfires, etc. The new schedule would be structured to collect data on the loss amount, type of loss (assumed or ceded), the country of the foreign counterparty, the relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated), and the date for each event/transaction.

In addition, BEA proposes to make the following two modifications to items collected on the previous BE-140 survey form:

(1) *Lowering the threshold for reporting large, infrequent reinsurance transactions.* On the 2013 BE-140 benchmark survey, the threshold for reporting these transactions was \$1 billion. For the 2018 BE-140 benchmark survey, in order to collect more comprehensive information, a lower threshold of \$250 million will be used. In addition, reporters will be required to indicate if the transactions either included a transfer of reserves or were related to a catastrophic event, for up to 10 transactions.

(2) *Modifying mandatory Schedule C to collect additional information regarding the expected average maturity of reserves that are transferred and included in the premiums reported on the survey.* Information about reserve transfers would be collected for the large, infrequent reinsurance transactions collected at the proposed threshold of \$250 million (proposed modification (1) above). Reporters of such transactions would be required to provide additional information about those transactions that included a transfer of reserves at the inception of new reinsurance contracts, or for the recapture or termination of reinsurance contracts. The proposed schedule would

request information about the type of premium/loss (either assumed or ceded), the country of the foreign counterparty, the relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated), the expected average maturity of the reserves, the reserve amount, and the date of the transaction. A text field will also be provided to allow the respondent to include additional details about each transaction.

BEA proposes to redesign the format and wording of the survey. The new survey design would incorporate improvements that have been made to other BEA surveys. Some enhancements are the result of a recent cognitive review conducted with selected survey respondents during the planning for the 2017 BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. Survey instructions and data item descriptions would be changed to improve clarity and ensure the benchmark survey form is consistent with other BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (PRA). The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608-0073 for which approval has expired. Surveys were collected for the 2013 BE-140 in calendar years 2014 and 2015. No survey submissions were solicited by BEA after the expiration and discontinuance of the collection in February of 2017.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-140 survey, as proposed, is expected to result in the filing of reports

from approximately 1,300 respondents. Approximately 1,000 respondents would report mandatory data on the survey, and approximately 300 would file exemption claims. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average (1) 9 hours for the 600 respondents that file mandatory or voluntary data by country and affiliation for relevant transaction types on the mandatory schedules; (2) 2 hours for the 400 respondents that file mandatory data by transaction type but not by country or affiliation; and (3) 1 hour for other responses. These burden-hour estimates consider time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 6,500 hours, or 5 hours per response (6,500 hours/1,300 respondents), compared to 4,689 hours, or about 4.5 hours per response (4,689 hours/1,042 respondents) for the previous BE-140 benchmark survey in 2013. The increase in burden hours is due to an estimated increase in the size of the respondent universe from 2013 to 2018, as well as changes to the content of the survey.

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Commerce invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the PRA. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory

Flexibility Act, 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE-140 report would be required of any U.S. insurance company that had insurance transactions with foreign persons in any of the types of transactions listed in the regulatory text for new § 801.12 at the end of this document. While the survey would not collect data on total sales or other measures of the overall size of the respondents to the survey, historically the respondents to the existing quarterly survey of insurance transactions and to the previous benchmark surveys were major U.S. insurance corporations. A completed benchmark survey, as proposed, would be required from U.S. insurance companies who had insurance transactions in any of the covered categories with foreign persons. For U.S. insurance companies who have transactions that exceeded \$2 million in at least one of the insurance services covered by the survey for calendar year 2018, a completed benchmark survey would include data on each of the covered types of insurance transactions with totals disaggregated by country and by relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated). For U.S. insurance companies that had transactions below \$2 million in each of the insurance services covered by the survey for calendar year 2018, a completed benchmark would include totals for each type of transaction in which they engaged. This below \$2 million exemption level would exclude most small businesses from mandatory reporting of detail by country and by affiliation. Any small businesses that are required to report would likely have engaged in a small number of covered transactions and are therefore expected to be below the expected average burden of 5 hours per response. Even if the responses for small businesses took the expected average burden of 5 hours per response, that would not constitute a significant impact on any small business or other entity. Because this rule would not have a significant impact on any small entities, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: March 15, 2019.

Paul W. Farelo,

Associate Director of International Economics, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, 801.10, 801.11, and 801.12 reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

■ 3. Add § 801.12 to read as follows:

§ 801.12 Rules and regulations for the BE-140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons—2018.

The BE-140 Benchmark Survey of Insurance Transactions by Insurance Companies with Foreign Persons will be conducted covering calendar year 2018. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-140 survey are given in paragraphs (a) through (e) of

this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from U.S. insurance companies subject to the reporting requirements of the BE-140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons—2018, contained herein, whether or not they are contacted by BEA. Also, a U.S. insurance company, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE-140 by the due date of the survey; or
(2) If exempt, by completing the determination of reporting status section of the BE-140 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE-140 report is required of each U.S. insurance company that had insurance transactions with foreign persons in the categories covered by the survey during its 2018 calendar year.

(c) *What must be reported.* (1) A U.S. insurance company that had transactions with foreign persons that exceeded \$2 million in at least one of the insurance categories covered by the survey during its 2018 calendar year, on an accrual basis, is required to provide data on the total transactions of each of the covered types of insurance transactions and must disaggregate the totals by country and by relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated). The determination of whether a U.S. insurance company is subject to this reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. insurance company that had transactions with foreign persons that were \$2 million or less in each of the insurance categories covered by the survey during its 2018 calendar year, on an accrual basis, is required to provide the total for each type of transaction in which they engaged.

(i) *Voluntary reporting of insurance transactions.* If, during calendar year 2018, total transactions were \$2 million or less in each of the insurance categories covered by the survey, on an accrual basis, the U.S. insurance company may, in addition to providing the required total for each type of

transaction, voluntarily report transactions at a country and affiliation level of detail on the applicable mandatory schedule(s).

(ii) [Reserved].

(3) *Exemption claims.* Any U.S. person that receives the BE-140 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE-140 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of insurance services.* Insurance services covered by the BE-140 survey consist of transactions between U.S. insurance companies and foreign persons for:

(1) Premiums earned on reinsurance assumed from companies resident abroad;

(2) Losses incurred on reinsurance assumed from companies resident abroad;

(3) Premiums paid for reinsurance ceded to companies resident abroad;

(4) Losses recovered on reinsurance ceded to companies resident abroad;

(5) Premiums earned from direct insurance sold to foreign persons;

(6) Losses incurred on direct insurance sold to foreign persons;

(7) Receipts for auxiliary insurance services provided to foreign persons; and

(8) Payments for auxiliary insurance services provided by foreign persons.

(e) *Types of transactions excluded from the scope of this survey—* Premiums paid to, or losses received from, foreign insurance companies on direct insurance.

(f) *Due date.* A fully completed and certified BE-140 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than July 31, 2019 (or by August 31, 2019 for respondents that use BEA's eFile system).

[FR Doc. 2019-05432 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113943-17]

RIN 1545-BO01

Certain Transfers of Property to Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of a notice of proposed rulemaking published in the Proposed Rules section of the **Federal Register** on June 8, 2016. If adopted, the proposed rules would have provided guidance for transactions in which property of a C corporation becomes the property of a REIT following certain corporate distributions of controlled corporation stock. This document also contains a notice of proposed rulemaking that provides revised guidance on the same subject. These proposed regulations would affect REITs, C corporations the property of which becomes property of a REIT, and their respective shareholders.

DATES: Comments and requests for a public hearing must be received by May 10, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113943-17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-113943-17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-113943-17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Austin Diamond-Jones, (202) 317-5363; concerning the submission of comments or to request a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 337(d) of the Internal Revenue Code (Code).

On June 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (TD 9770) under section 337(d) (Temporary Regulations) in the **Federal Register** (81 FR 36793) concerning certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). A notice of proposed rulemaking (REG–126452–15) was published in the **Federal Register** (81 FR 36816) on the same day (2016 Proposed Regulations). The text of the Temporary Regulations served as the text for part of the 2016 Proposed Regulations, which also included an amendment not addressed in the Temporary Regulations. A correction to the Temporary Regulations was published in the **Federal Register** (81 FR 41800) on June 28, 2016.

The Treasury Department and the IRS received one written comment and a letter addressed to the Secretary of the Treasury (Secretary) by the Chairmen and Ranking Members of the Ways and Means Committee of the U.S. House of Representatives and the Finance Committee of the U.S. Senate in response to the 2016 Proposed Regulations. The comment requested a public hearing, and a hearing was held on November 9, 2016.

After consideration of the letter, the written comment, and the comments made at the public hearing, the Treasury Department and the IRS adopted the 2016 Proposed Regulations, in part, in final regulations (TD 9810) published in the **Federal Register** (82 FR 5387) on January 18, 2017 (Final Regulations). The Final Regulations adopted a definition of the term “recognition period” that is consistent with that used in section 1374(d) relating to S corporations. The Final Regulations amended and removed the corresponding provisions in the Temporary Regulations and indicated that the Treasury Department and the IRS would continue to study other issues addressed in the Temporary Regulations and the 2016 Proposed Regulations.

Executive Order 13789 (E.O. 13789), issued on April 21, 2017, instructed the Secretary to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the federal tax laws; or (iii) exceed the statutory authority of the IRS. E.O. 13789 further instructed the Secretary to submit to the President within 60 days an interim report identifying regulations that meet these criteria.

Notice 2017–38 (2017–30 I.R.B. 147 (July 24, 2017)) included the Temporary Regulations in a list of eight regulations identified by the Secretary in the interim report as meeting at least one of the first two criteria specified in E.O. 13789. In particular, Notice 2017–38 mentioned a concern raised by commenters that the Temporary Regulations “could result in over-inclusion of gain in some cases, particularly where a large corporation acquires a small corporation that engaged in a Section 355 spinoff and the large corporation subsequently makes a REIT election.” See also Executive Order 13789—Second Report to the President on Identifying and Reducing Tax Regulatory Burdens (Second Report), 82 FR 48013 (October 16, 2017) (stating that the Treasury Department and the IRS “agree that the temporary regulations may produce inappropriate results in some cases”). The Treasury Department and the IRS received three written comments in response to Notice 2017–38 and the Second Report that addressed the Temporary Regulations and the 2016 Proposed Regulations.

Explanation of Provisions

I. Gain Recognized by Successor Corporations

Pursuant to § 1.337(d)–7(c)(6) of the 2016 Proposed Regulations, if a C corporation is the distributing corporation or the controlled corporation in a “related section 355 distribution” (within the meaning of proposed § 1.337(d)–7(f)(1)(i)), and the C corporation or its successor (within the meaning of proposed § 1.337(d)–7(f)(2)) engages in a conversion transaction (as defined in § 1.337(d)–7(a)(2)(ii)) involving a REIT, the C corporation or its successor will be treated as making a deemed sale election (within the meaning of proposed § 1.337(d)–7(c)). Commenters suggested that application of proposed § 1.337(d)–7(c)(6) to successors (within the meaning of proposed § 1.337(d)–7(f)(2)) could result in recognition of gain greatly in excess of the amount that would have been recognized if the distributing corporation or the controlled corporation had directly engaged in a conversion transaction.

To illustrate the issue, consider the following example (Example One): Each of Distributing and Acquiring is a C corporation, and each holds real estate assets with \$1 billion fair market value and \$0 adjusted basis. Distributing and Acquiring are unrelated. Distributing owns 100 percent of the stock of Controlled, which holds assets with \$20 million fair market value and \$0

adjusted basis. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution (as defined in proposed § 1.337(d)–7(a)(2)(vi)). In Year 3, Acquiring acquires Controlled in a transaction in which Acquiring becomes a successor of Controlled (within the meaning of proposed § 1.337(d)–7(f)(2)). At that time, Acquiring has no plan to convert to a REIT. No asset held by Distributing, Controlled, or Acquiring appreciates or depreciates in value between Year 1 and Year 9. In Year 9, Acquiring merges into a REIT and does not make a deemed sale election under § 1.337(d)–7(c)(5).

As a successor to Controlled, Acquiring itself was ineligible to make a REIT election until Year 11. Section 856(c)(8). However, the merger of Acquiring into a REIT is not addressed by section 856(c)(8). On the other hand, if Acquiring were not a successor to a distributing corporation or a controlled corporation, its assets would be subject to section 1374 treatment upon the merger (unless Acquiring actually made a deemed sale election).

Because Acquiring is a successor to a controlled corporation and engages in a conversion transaction within ten years of a related section 355 distribution, the 2016 Proposed Regulations would treat Acquiring as making a deemed sale election and require Acquiring to recognize \$1.02 billion gain (\$1.02 billion fair market value less \$0 adjusted bases of all its property at the time of the merger). This gain would greatly exceed the \$20 million gain (\$20 million fair market value less \$0 adjusted basis) Controlled would have recognized if Acquiring had been a REIT when it acquired Controlled’s converted property. The Treasury Department and the IRS agree with the commenters that this result is inappropriate.

To address the concern described in the previous paragraph, the Treasury Department and the IRS propose adopting a new limitation to the general rule in newly proposed § 1.337(d)–7(c)(6)(i) (the general rule) (which is the same as the general rule in the 2016 Proposed Regulations). As a result of the limitation, gain immediately recognized by a C corporation engaging in a section 355 distribution and a later conversion transaction will be limited to gain on property traceable to the section 355 distribution.

The limitation is based on a comment received and would be available to a distributing corporation or a controlled corporation (and a successor) that engages in a conversion transaction within the ten-year period following a related section 355 distribution. The limitation would provide that, if a C

corporation is treated as making a deemed sale election but has not actually made such an election, the C corporation would be treated as making the election only with respect to its distribution property. "Distribution property" would be defined as property owned by a distributing corporation or a controlled corporation or a member of the separate affiliated group of the distributing corporation or the controlled corporation (SAG member) immediately after a section 355 distribution, and other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to that property. However, no formulation of the step transaction doctrine will be used to determine whether property acquired after the distribution is distribution property. The C corporation's property that is not distribution property would be subject to section 1374 treatment under § 1.337(d)–7(b) instead of deemed sale treatment under § 1.337(d)–7(c)(6). In general, the C corporation must establish that any particular property is not distribution property. However, property with built-in loss as of the date of the conversion transaction will be presumed to not be distribution property unless the C corporation establishes that it owned such property immediately after the related section 355 distribution.

To illustrate the limitation, consider the following example (Example Two): Distributing is a C corporation that owns 100 percent of the stock of Controlled. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution. At the time of the section 355 distribution, Controlled has one asset (Asset 1) with \$5 million fair market value and \$0 adjusted basis. In Year 2, Controlled purchases a second asset (Asset 2), which has \$1 million fair market value and \$1 million adjusted basis. In Year 5, Controlled engages in a conversion transaction when it merges into a REIT in a transaction described in section 368(a)(1). At the time of the merger, Asset 1 has \$5.5 million fair market value, and Asset 2 has \$1.1 million fair market value. The adjusted bases of Asset 1 and Asset 2 are both unchanged.

If the limitation is available and Controlled does not make a deemed sale election, Controlled would be treated as making a deemed sale election only with respect to Asset 1 (and not Asset 2) because Asset 1 was held by Controlled immediately after the related section 355 distribution and is therefore distribution property. Because Controlled can establish that it did not own Asset 2 immediately after the

related section 355 distribution (and the basis of Asset 2 was not determined, directly or indirectly, in whole or in part, by reference to the basis of an asset held by Controlled immediately after the related section 355 distribution in Year 1), Asset 2 is not distribution property, and Controlled will not be treated as electing deemed sale treatment with respect to Asset 2. Accordingly, Controlled would recognize \$5.5 million gain on Asset 1 (\$5.5 million fair market value less \$0 adjusted basis), and the REIT would be subject to section 1374 treatment with respect to Asset 2 and its \$0.1 million built-in gain.

However, if Controlled had elected deemed sale treatment or was unable to establish that Asset 2 was not distribution property, then all of its assets that became converted property, rather than only the distribution property, would be treated as sold upon Controlled's merger into a REIT in Year 5. Controlled would recognize \$5.6 million gain (\$5.5 million gain on Asset 1 (\$5.5 million fair market value less \$0 adjusted basis at the time of the merger) and \$0.1 million gain on Asset 2 (\$1.1 million fair market value less \$1 million adjusted basis at the time of the merger)). Neither Asset 1 nor Asset 2 would be subject to section 1374 treatment.

As a result of the combination of the general rule and the limitation, a C corporation that engages in a section 355 distribution and a later conversion transaction recognizes immediate gain only on property that is traceable to the section 355 distribution. Application of the limitation could cause a single conversion transaction to result in some property being subject to deemed sale treatment and other property being subject to section 1374 treatment. However, the Treasury Department and the IRS have determined that this approach is administrable by both taxpayers and the IRS and that it satisfies the concerns expressed by E.O. 13789, Notice 2017–38, and the Second Report. Because application of the limitation results in only property held immediately after the related section 355 distribution being subject to deemed sale treatment, the property of a successor to the distributing corporation, the controlled corporation, or a SAG member will not be subject to deemed sale treatment unless such property is distribution property from a related section 355 distribution involving the successor.

A commenter suggested an approach pursuant to which distribution property subject to deemed sale treatment as a result of the general rule could be

deemed to be sold for its fair market value at the time of the related section 355 distribution. However, the commenter stated that this approach "may be objectionable given [E.O. 13789's] focus on reducing complexity and taxpayer burdens in Treasury regulations," because it would require taxpayers to perform a valuation of their assets at the time of a related section 355 distribution and to keep records of the valuation in case the taxpayer engages in a later conversion transaction. In the commenter's view, this valuation and record keeping would be burdensome and result in administrative difficulties for both taxpayers and the IRS. The Treasury Department and the IRS agree.

In addition, section 1374 treatment would need to be applied to post-distribution appreciation to prevent it from inappropriately escaping corporate-level taxation. As a result, an individual asset that is distribution property would be subject to deemed sale treatment on the gain inherent in the asset at the time of the related section 355 distribution, and to section 1374 treatment on the appreciation in such asset after the post-distribution period. This result further increases the burdens and administrative difficulties imposed by the alternative approach. Because this approach is inconsistent with the goal of reducing administrative burdens described in E.O. 13789 and reflected in Notice 2017–38 and the Second Report, the Treasury Department and the IRS decline to adopt this approach.

II. Predecessors and Successors of SAG Members

The Treasury Department and the IRS are aware of certain situations in which the predecessor or successor to a SAG member would not itself be a SAG member immediately before or after, respectively, the transaction giving rise to the predecessor-successor relationship. To prevent avoidance, the proposed regulations would expand the rule of proposed § 1.337(d)–7(f)(2) so that references to a member of the separate affiliated group of the distributing corporation or the controlled corporation include references to any successor of such member.

III. Additional Comments

A commenter described an example similar to the following example (Example Three): Distributing is a C corporation that holds real estate assets with \$1 billion fair market value and \$0 adjusted basis. Distributing owns 100 percent of the stock of Controlled,

which holds assets with \$100,000 fair market value and \$0 adjusted basis. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution. In Year 10, Distributing merges into a REIT.

Under the 2016 Proposed Regulations, Distributing would have been treated as making a deemed sale election as a result of engaging in a conversion transaction (the merger) during the ten-year period following a section 355 distribution. Accordingly, Distributing would have recognized \$1 billion gain as a result of being treated as selling all of its real estate assets. The commenter argued that requiring a C corporation to recognize the built-in gain on assets worth \$1 billion because of a distribution of assets worth \$100,000 in an earlier year “seems absurd.” The Treasury Department and the IRS disagree. Section 856(c)(8), which was added by section 311 of the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422, prevents the distributing corporation, the controlled corporation, and any successor to the distributing corporation or the controlled corporation from electing REIT status for ten years following a section 355 distribution. Section 856(c)(8) applies regardless of any disparity in size between the distributing corporation and the controlled corporation. The commenter did not identify any reason a merger into a REIT should be treated more favorably than a conversion to a REIT. Accordingly, the Treasury Department and the IRS have determined that application of the 2016 Proposed Regulations in the hypothetical presented by the commenter is consistent with the intent of Congress expressed by the PATH Act. The newly proposed regulations would not change this rule.

The Treasury Department and the IRS continue to study the Temporary Regulations and the 2016 Proposed Regulations, including issues raised by the comments, and welcome further comments on those issues.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant

economic impact on a substantial number of small entities. These proposed regulations would affect transactions in which property of a C corporation becomes the property of a REIT following a section 355 distribution of controlled C corporation stock. Generally, these section 355 distributions involve publicly traded C corporations, which typically are not small entities as defined by the Regulatory Flexibility Act. Transactions in which the property of such C corporation becomes the property of a REIT generally involve the transfer of all of the assets of the C corporation. Therefore, the transferee REIT likely also would not be a small entity, as defined by the Regulatory Flexibility Act. As a result, this certification is based on the conclusion that these proposed regulations would primarily affect large C corporations and REITs that have substantial numbers of shareholders. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspect of the proposed rules. In particular, the Treasury Department and the IRS are requesting comments whether further guidance is necessary regarding how taxpayers should be permitted to establish whether property is or is not distribution property. All comments will be available at <http://www.regulations.gov> or upon request. A public hearing will be scheduled in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing

will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Austin Diamond-Jones, Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 337(d), §§ 1.337(d)–7(c)(6), 1.337(d)–7(f), 1.337(d)–7(g)(2)(ii), and 1.337(d)–7(g)(2)(iv) of the notice of proposed rulemaking that was published in the **Federal Register** on June 8, 2016 (81 FR 36816), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 1.337(d)–7 is amended by adding paragraph (a)(2)(viii) and revising paragraphs (c)(6), (f), and (g)(2)(ii).

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) * * *

(2) * * *

(viii) *Distribution property.* The term *distribution property* means—

(A) property owned immediately after a section 355 distribution by the distributing corporation, a controlled corporation (as those terms are defined in section 355(a)(1)), or a member of a separate affiliated group (as defined in section 355(b)(3)(B)) of which the distributing corporation or a controlled corporation is the common parent (but no formulation of the step transaction doctrine will be used to determine whether property acquired after the distribution is distribution property pursuant to this paragraph (a)(2)(viii)(A)), and

(B) property with a basis determined, directly or indirectly, in whole or in part, by reference to property described in paragraph (a)(2)(viii)(A) of this section.

* * * * *

(c) * * *

(6) *Conversion transaction following a section 355 distribution*—(i) *In general.* Except as provided in paragraph (c)(6)(ii) of this section, a C corporation described in paragraph (f)(1) of this section is treated as having made the election under paragraph (c)(5) of this section with respect to a conversion transaction if the conversion transaction occurs following the related section 355 distribution (as defined in paragraph (f)(1)(i) of this section) and the C corporation has not made such an election.

(ii) *Limitation.* A C corporation treated as having made the election under paragraph (c)(5) of this section as a result of paragraph (c)(6)(i) of this section is not treated as having made the election with respect to property that the taxpayer establishes is not distribution property with respect to the related section 355 distribution. For purposes of this paragraph (c)(6)(ii), any property with an adjusted basis in excess of its fair market value as of the date of the conversion transaction will not be treated as distribution property unless the taxpayer establishes that it owned such asset immediately after the related section 355 distribution. If the limitation applies, then paragraph (b) of this section will apply to the property that is not distribution property with respect to the related section 355 distribution.

* * * * *

(f) *Conversion transaction preceding or following a section 355 distribution*—(1) *In general.* A C corporation or a REIT is described in this paragraph (f)(1) if—

(i) The C corporation or the REIT engages in a conversion transaction involving a REIT during the twenty-year period beginning on the date that is ten years before the date of a section 355 distribution (the related section 355 distribution); and

(ii) The C corporation or the REIT engaging in the related section 355 distribution is either—

(A) The distributing corporation or the controlled corporation, as those terms are defined in section 355(a)(1); or

(B) A member of the separate affiliated group (as defined in section 355(b)(3)(B)) of the distributing corporation or the controlled corporation.

(2) *Predecessors and successors.* For purposes of this paragraph (f), any reference to a controlled corporation, a distributing corporation, or a member of the separate affiliated group of a distributing corporation or a controlled corporation includes a reference to any predecessor or successor of such

corporation. Predecessors and successors include corporations which succeed to and take into account items described in section 381(c) of the distributing corporation or the controlled corporation, and corporations having such items to which the distributing corporation or the controlled corporation succeeded and took into account.

(3) *Exclusion of certain conversion transactions.* A C corporation or a REIT is not described in paragraph (f)(1) of this section if—

(i) The distributing corporation and the controlled corporation are both REITs immediately after the related section 355 distribution (including by reason of elections under section 856(c)(1) made after the related section 355 distribution that are effective before the related section 355 distribution) and at all times during the two years thereafter;

(ii) Section 355(h)(1) does not apply to the related section 355 distribution by reason of section 355(h)(2)(B); or

(iii) The related section 355 distribution is described in a ruling request referred to in section 311(c) of Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422.

(g) * * *

* * *

(ii) *Conversion transactions occurring on or after the date these regulations are published in the Federal Register as final regulations.* Paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section will apply to conversion transactions occurring 30 days after the date these regulations are published in the **Federal Register** as final regulations, and to conversion transactions and related section 355 distributions for which the conversion transaction occurs before, and the related section 355 distribution occurs on or after, the date that is 30 days after the date these regulations are published in the **Federal Register** as final regulations. For conversion transactions that occurred on or after June 7, 2016 and before the date that is 30 days after these regulations are published in the **Federal Register** as final regulations, see §§ 1.337(d)–7 and 1.337(d)–7T as contained in 26 CFR part 1 in effect on April 1, 2018. However, taxpayers may consistently apply paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section in their entirety for all conversion transactions described in the preceding sentence. For conversion transactions that occurred on or after January 2, 2002 and before June 7, 2016,

see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2016.

* * * * *

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–05682 Filed 3–25–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121694–16]

RIN 1545–BN80

Updating Section 301 Regulations To Reflect Statutory Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 301 of the Internal Revenue Code of 1986 (Code). The proposed regulations would update existing regulations under section 301 to reflect statutory changes made by the Technical and Miscellaneous Revenue Act of 1988, which changes provide that the amount of a distribution of property made by a corporation to its shareholder is the fair market value of the distributed property. The proposed regulations would affect any shareholder who receives a distribution of property from a corporation.

DATES: Written or electronic comments and requests for a public hearing must be received by June 24, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121694–16), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–121694–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–121694–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid R. Glycer, (202) 317–6847; concerning submission of comments, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 301 of the Code originally was enacted as part of the Internal Revenue Code of 1954. Section 301 provides rules for the treatment of a distribution of property, including money, made by a corporation to its shareholder with respect to that shareholder's stock ownership in that corporation (distribution).

Section 301(b)(1) provides general rules for determining the amount of a distribution. As enacted in 1954, section 301(b)(1) provided rules for determining the amount of a distribution that differed depending on whether the shareholder receiving the distribution (distributee) was a corporation. Pre-1986 amendments to section 301(b)(1) added special rules to determine the amount of distributions received from foreign distributing corporations and by foreign corporate distributees. Similarly, section 301(d), as enacted in 1954, provided rules for determining the basis of property received in a distribution that differed depending on whether the distributee was a corporation. As with section 301(b)(1), pre-1986 amendments to section 301(d) added special rules to determine the basis of property received from foreign distributing corporations and by foreign corporate distributees.

Section 1006(e)(10) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (1988) (the Act), amended section 301(b)(1) to eliminate the distinction between corporate and noncorporate distributees as well as the special rules relating to foreign corporations. Similarly, section 1006(e)(11) of the Act amended section 301(d) to eliminate the distinction between corporate and noncorporate distributees. (These amendments to section 301(b)(1) and (d) are referred to as the 1988

Amendments.) Section 1019(a) of the Act provided that, in general, the 1988 Amendments were effective as if included in the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (1986).

As a result of the 1988 Amendments, effective for taxable years beginning after December 31, 1986, section 301(b)(1) provides that, for purposes of section 301, the amount of any distribution shall be the amount of money received plus the fair market value of the other property received. Section 301(d), as amended by the 1988 Amendments and effective for taxable years beginning after December 31, 1986, provides that the basis of property received in a distribution to which section 301(a) applies shall be the fair market value of such property.

The current regulations issued under section 301 reflect the rules of sections 301(b)(1) and 301(d) as they existed prior to the 1988 Amendments. Accordingly, to the extent preempted by statute, the current regulations have no application.

Explanation of Provisions

The proposed regulations update § 1.301-1 to reflect the statutory changes made to section 301(b)(1) and (d) by the 1988 Amendments. The scope of the changes to the current regulations issued under section 301 made by these proposed regulations is limited to (1) deleting regulatory provisions made obsolete by statutory changes, (2) making minor additions and revisions to regulatory provisions to reflect current statutory text, and (3) making certain non-substantive changes for purposes of clarity and readability, including reordering and redesignating paragraphs of the current regulations. The proposed regulations also update cross-references in §§ 1.356-1(f), 1.368-2(m)(3)(iii),

1.902-1(a)(12), and 1.902-3(a)(7) to reflect the proposed reordering and redesignating of paragraphs in § 1.301-1.

Specifically, some of the provisions of current § 1.301-1(b) are now found in proposed § 1.301-1(c). Thus, the definition of the amount of a distribution subject to section 301 and the determination of the fair market value of a distribution remain in § 1.301-1(b), while the determination of when to include a distribution in gross income, and its fair market value, is now found in proposed § 1.301-1(c).

In addition, current § 1.301-1(g) is redesignated as proposed § 1.301-1(f) and is revised to clarify the application of the principles of section 357(d) to the limitation on the amount of a distribution provided by section 301(b)(2). Section 357(d) was added to the Code by section 3001(b)(1) of the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law No. 106-36, 113 Stat. 127. On January 4, 2001, the Treasury Department and the IRS published a temporary regulation (T.D. 8924) in the **Federal Register** (66 FR 723) to address this interaction. Current § 1.301-1(g), published in the **Federal Register** (66 FR 49278) on September 27, 2001 as T.D. 8964, provides that no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d). Proposed § 1.301-1(f) would clarify the language of current § 1.301-1(g) by providing that no reduction in the amount of a distribution is made for the amount of any liability except to the extent the liability is assumed by the shareholder within the meaning of section 357(d).

The specific changes to § 1.301-1 are shown in the following table:

Paragraph designation in § 1.301-1	Change
(a)	Updated to reflect current law.
(b)	Updated to reflect current law, with the definition of the amount of a distribution subject to section 301 and the determination of the fair market value of a distribution remaining in paragraph (b) and the determination of when to include a distribution in gross income, and its fair market value, redesignated as paragraph (c).
(c)	Redesignated as paragraph (d).
(d)	Deleted as obsolete.
(e)	Deleted as obsolete.
(f)	Updated to reflect current law and redesignated as paragraph (e).
(g)	Redesignated as paragraph (f) and revised to clarify that no reduction in the amount of a distribution is made for the amount of any liability except to the extent the liability is assumed by the shareholder within the meaning of section 357(d).
(h)	Updated to reflect current law and redesignated as paragraph (g).
(i)	No change.
(j)	Updated to reflect current law and redesignated as paragraph (h).
(k)	Deleted as obsolete.
(l)	Redesignated as paragraph (j).
(m)	Redesignated as paragraph (k).
(n)	Deleted as obsolete.
(o)	Deleted as obsolete.

Paragraph designation in § 1.301–1	Change
(p)	Redesignated as paragraph (l).
(q)	Redesignated as paragraph (m).
(n)	New effective date paragraph.

Proposed Effective/Applicability Date

The proposed regulations would apply to distributions made after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, these proposed regulations would update current regulations under section 301 to reflect statutory changes made by the 1988 Amendments, which statutory changes apply to distributions made in taxable years beginning after December 31, 1986.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grid R. Glycer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in developing these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX REGULATIONS

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.301–1 is revised to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

(a) *General.* Section 301 provides the general rule for treatment of distributions made in taxable years beginning after December 31, 1986, of property by a corporation to a shareholder with respect to its stock. The term *property* is defined in section 317(a). Such distributions, except as otherwise provided in this chapter, shall be treated as provided in section 301(c). Under section 301(c), distributions may be included in gross income to the extent the amount distributed is considered a dividend under section 316, applied against and reduce the adjusted basis of the stock, treated as gain from the sale or exchange of property, or (in the case of certain distributions out of increase in value accrued before March 1, 1913) may be exempt from tax. The amount of the distributions to which section 301 applies is determined in accordance with the provisions of section 301(b). The basis of property received in a distribution to which section 301 applies is determined in accordance with the provisions of section 301(d).

(b) *Amount of distribution and determination of fair market value.* The amount of a distribution to which section 301 applies shall be the amount of money received in the distribution, plus the fair market value of other property received in the distribution. The fair market value of any property distributed shall be determined as of the date of the distribution.

(c) *Time of inclusion in gross income and time of determination of fair market value.* A distribution made by a

corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands without regard to whether such date is the same as that on which the corporation made the distribution. For example, if a corporation distributes a taxable dividend in property on December 30, 2018, which is received by, or unqualifiedly made subject to the demand of, its shareholders on January 3, 2019, the amount to be included in the gross income of the shareholders will be the fair market value of such property on December 30, 2018, although such amount will not be includible in the gross income of the shareholders until January 3, 2019.

(d) *Application of section to shareholders.* Section 301 is not applicable to an amount paid by a corporation to a shareholder unless the amount is paid to the shareholder in the shareholder's capacity as such.

(e) *Example.* Corporation M, formed in 1998, has never been an acquiring corporation in a transaction to which section 381(a) applies. On January 1, 2019, A, an individual owned all of the stock of Corporation M, consisting of a single share, with an adjusted basis of \$2,000. During 2019, A received distributions from Corporation M totaling \$30,000, consisting of \$10,000 in cash and listed securities having a basis in the hands of Corporation M and a fair market value on the date distributed of \$20,000. Corporation M's taxable year is the calendar year. As of December 31, 2018, Corporation M had accumulated earnings and profits in the amount of \$26,000, and it had no earnings and profits and no deficit for 2019. Of the \$30,000 received by A, \$26,000 will be treated as an ordinary dividend; the remaining \$4,000 will be applied against the adjusted basis of his stock; the \$2,000 in excess of the adjusted basis of his stock will be treated as gain from the sale or exchange of property under section 301(c)(3)(A). If A subsequently sells his stock in Corporation M, the basis for determining gain or loss on the sale will be zero.

(f) *Reduction for liabilities*—(1) *General rule.* For purposes of section 301(b)(2), no reduction in the amount of a distribution shall be made for the amount of any liability, except to the

extent the liability is assumed by the shareholder within the meaning of section 357(d).

(2) *No reduction below zero.* Any reduction pursuant to paragraph (f)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) *Effective dates—(i) In general.* This paragraph (f) applies to distributions occurring after January 4, 2001.

(ii) *Retroactive application.* This paragraph (f) also applies to distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99-59 (1999-2 C.B. 761), including transactions designed to reduce gain (see § 601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (f) applies), see rules in effect on January 4, 2001 (see § 1.301-1(g) as contained in 26 CFR part 1 revised April 1, 2001).

(g) *Basis.* The basis of property received in a distribution to which section 301 applies shall be the fair market value of such property. See paragraph (b) of this section.

(h) *Transfers for less than fair market value.* If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, such shareholder shall be treated as having received a distribution to which section 301 applies. In such case, the amount of the distribution shall be the excess of the fair market value of the property over the amount paid for such property at the time of the transfer. For example, on January 3, 2019, A, a shareholder of Corporation X, purchased property from X for \$20. The fair market value of such property on January 3, 2019 was \$100. The amount of the distribution to A determined under section 301(b) is \$80.

(i) [Reserved]

(j) *Transactions treated as distributions.* A distribution to shareholders with respect to their stock is within the terms of section 301 although it takes place at the same time as another transaction if the distribution is in substance a separate transaction whether or not connected in a formal sense. This is most likely to occur in the case of a recapitalization, a reincorporation, or a merger of a corporation with a newly organized corporation having substantially no property. For example, if a corporation having only common stock outstanding, exchanges one share of newly issued common stock and one bond in the principal amount of \$10 for each share

of outstanding common stock, the distribution of the bonds will be a distribution of property (to the extent of their fair market value) to which section 301 applies, even though the exchange of common stock for common stock may be pursuant to a plan of reorganization under the terms of section 368(a)(1)(E) (recapitalization) and even though the exchange of common stock for common stock may be tax free by virtue of section 354.

(k) *Cancellation of indebtedness.* The cancellation of indebtedness of a shareholder by a corporation shall be treated as a distribution of property.

(l) *Cross references.* For certain rules relating to adjustments to earnings and profits and for determining the extent to which a distribution is a dividend, see sections 312 and 316 and regulations thereunder.

(m) *Split-dollar and other life insurance arrangements—(1) Split-dollar life insurance arrangements—(i) Distribution of economic benefits.* The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in § 1.61-22(b)(1) or (2), of economic benefits described in § 1.61-22(d) or of amounts described in § 1.61-22(e) is treated as a distribution of property, the amount of which is determined under § 1.61-22(d) and (e), respectively.

(ii) *Distribution of entire contract or undivided interest therein.* A transfer (within the meaning of § 1.61-22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to § 1.61-22(g)(1) and (2).

(2) *Other life insurance arrangements.* A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under § 1.61-22(b).

(3) *When distribution is made—(i) In general.* Except as provided in paragraph (m)(3)(ii) of this section, paragraph (c) of this section shall apply to determine when a distribution described in paragraph (m)(1) or (2) of this section is taken into account by a shareholder.

(ii) *Exception.* Notwithstanding paragraph (c) of this section, a distribution described in paragraph (m)(1)(ii) of this section shall be treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided

interest therein, is transferred (within the meaning of § 1.61-22(c)(3)) to the shareholder.

(4) *Effective date—(i) General rule.* This paragraph (m) applies to split-dollar and other life insurance arrangements entered into after September 17, 2003. For purposes of this paragraph (m)(4), a split-dollar life insurance arrangement is entered into as determined under § 1.61-22(j)(1)(ii).

(ii) *Modified arrangements treated as new arrangements.* If a split-dollar life insurance arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61-22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(n) *Applicability date.* Paragraphs (a) through (c), (e), (g), and (h) of this section apply to distributions under section 301 made after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 3.** Section 1.356-1 is amended by revising paragraph (f) to read as follows:

§ 1.356-1 Receipt of additional consideration in connection with an exchange.

* * * * *

(f) See § 1.301-1(j) for certain transactions which are not within the scope of section 356.

* * * * *

■ **Par. 4.** Section 1.368-2 is amended by revising the last sentence of paragraph (m)(3)(iii) to read as follows:

§ 1.368-2 Definition of terms.

* * * * *

(m) * * *

(3) * * *

(iii) * * * See § 1.301-1(j).

* * * * *

§ 1.902-1(a)(12) [Amended]

■ **Par. 5.** In § 1.902-1(a)(12), remove the reference “§ 1.301-1(b)” and add in its place “§ 1.301-1(c)”.

§ 1.902-3(a)(7) [Amended]

■ **Par. 6.** In § 1.902-3(a)(7), remove the reference “§ 1.301-1(b)” and add in its place “§ 1.301-1(c)”.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019-05649 Filed 3-25-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 88

[NIOSH Docket 094]

World Trade Center Health Program; Petition 021—Deep Vein Thrombosis and Pulmonary Embolism; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On November 28, 2018, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 021) to add “multiple deep vein thrombosis and pulmonary embolism” to the List of WTC-Related Health Conditions (List). Upon reviewing the scientific and medical literature, including information provided by the petitioner, the Administrator has determined that the available evidence does not have the potential to provide a basis for a decision on whether to add deep vein thrombosis or pulmonary embolism to the List. The Administrator also finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of March 26, 2019.

ADDRESSES: Visit the WTC Health Program website at <https://www.cdc.gov/wtc/received.html> to review Petition 021.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C-48, Cincinnati, OH 45226; telephone (855) 818-1629 (this is a toll-free number); email NIOSHregs@cdc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- A. WTC Health Program Statutory Authority
- B. Procedures for Evaluating a Petition
- C. Petition 021
- D. Review of Scientific and Medical Information and Administrator Determination
- E. Administrator's Final Decision on Whether To Propose the Addition of Deep Vein Thrombosis and/or Pulmonary Embolism to the List

F. Approval To Submit Document to the Office of the Federal Register

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113), added Title XXXIII to the Public Health Service (PHS) Act,¹ establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits for health conditions on the List to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this document mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.15. Within 90 days after receipt of a valid petition to add a condition to the List, the Administrator must take one of the following four actions described in section 3312(a)(6)(B) of the PHS Act and § 88.16(a)(2) of the Program regulations: (1) Request a recommendation of the STAC; (2) publish a proposed rule in the **Federal Register** to add such health condition; (3) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination; or (4) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (1) through (3) above.

B. Procedures for Evaluating a Petition

In addition to the regulatory provisions, the WTC Health Program has developed policies to guide the review of submissions and petitions,² as

¹ Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the James Zadroga 9/11 Health and Compensation Act of 2010 found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

² See WTC Health Program [2014], *Policy and Procedures for Handling Submissions and Petitions*

well as the analysis of evidence supporting the potential addition of a non-cancer health condition to the List.³

A valid petition must include sufficient medical basis for the association between the September 11, 2001, terrorist attacks and the health condition to be added; in accordance with WTC Health Program policy, reference to a peer-reviewed, published, epidemiologic study about the health condition among 9/11-exposed populations or to clinical case reports of health conditions in WTC responders or survivors may demonstrate the required medical basis.⁴ Studies linking 9/11 agents or hazards⁵ to the petitioned health condition may also provide sufficient medical basis for a valid petition.

After the Program has determined that a petition is valid, the Administrator must direct the Program to conduct a review of the scientific literature to determine if the available scientific information has the potential to provide a basis for a decision on whether to add the health condition to the List.⁶ The literature review is a keyword search of relevant scientific databases; peer-reviewed, published, epidemiologic studies (including direct observational studies in the case of health conditions such as injuries) about the health condition among 9/11-exposed populations are then identified from the initial search results. The Program evaluates the scientific quality of each peer-reviewed, published, epidemiologic study of the health condition identified in the literature search; the Program then compiles the scientific results of each study to assess whether a causal relationship between 9/11 exposures and the health condition is supported, and evaluates whether the

to Add a Health Condition to the List of WTC-Related Health Conditions, May 14, 2014, <http://www.cdc.gov/wtc/pdfs/WTCHPPPpetitionHandlingProcedures14May2014.pdf>.

³ See WTC Health Program [2017], *Policy and Procedures for Adding Non-Cancer Conditions to the List of WTC-Related Health Conditions*, February 14, 2017, https://www.cdc.gov/wtc/pdfs/policies/WTCHPP_P_Padding_NonCancers_14_February_2017-508.pdf.

⁴ See *supra* note 2.

⁵ 9/11 agents are chemical, physical, biological, or other hazards reported in a published, peer-reviewed exposure assessment study, but which are reasonably assumed to have been present at any of the three sites. See WTC Health Program [2018], *Development of the Inventory of 9/11 Agents*, July 17, 2018, https://www.cdc.gov/ResearchGateway/Content/pdfs/Development_of_the_Inventory_of_9-11_Agents_20180717.pdf.

⁶ See *supra* note 3.

results of the studies are representative of the 9/11-exposed population of responders and survivors. A health condition may be added to the List if peer-reviewed, published, epidemiologic studies provide support that the health condition is substantially likely⁷ to be causally associated with 9/11 exposures. If the evaluation of evidence provided in peer-reviewed, published, epidemiologic studies of the health condition in 9/11 populations demonstrates a high, but not substantial, likelihood of a causal association between the 9/11 exposures and the health condition, then the Administrator may consider additional highly relevant scientific evidence regarding exposures to 9/11 agents from sources using non-9/11-exposed populations. If that additional assessment establishes that the health condition is substantially likely to be causally associated with 9/11 exposures among 9/11-exposed populations, the health condition may be added to the List.

C. Petition 021

On November 28, 2018, the Administrator received a petition (Petition 021) requesting the addition of “multiple deep vein thrombosis and pulmonary embolism” to the List.⁸ The petition referenced two scientific articles which provided sufficient medical basis for the petition to be considered valid because they are scientific sources that demonstrate a potential link between exposure to a 9/11 hazard (particulate matter)⁹ and deep vein thrombosis and/or pulmonary embolism: A 2008 study by Baccarelli *et al.*,¹⁰ and a publication by Franchini *et al.*¹¹

⁷ The “substantially likely” standard is met when the scientific evidence, taken as a whole, demonstrates a strong relationship between the 9/11 exposures and the health condition.

⁸ See Petition 021, *WTC Health Program: Petitions Received*, <http://www.cdc.gov/wtc/received.html>.

⁹ The 9/11 hazard identified by the petitioner was “particulate matter,” whereas the WTC Health Program *Inventory of 9/11 Agents* identifies particulate matter more precisely as WTC Dust: Glass shards, WTC Dust: PM₁₀, WTC Dust: PM_{2.5}, WTC Dust: Particles >2 µm, and WTC Dust: Particles >5 µm. See *supra* note 5.

¹⁰ Baccarelli A, Martinelli I, Zanobetti A, Grillo P, Hou LF, Bertazzi PA, Mannucci PM, Schwartz J [2008], *Exposure to Particulate Air Pollution and Risk of Deep Vein Thrombosis*, *Arch Intern Med* 12;168(9).

¹¹ The petitioner stated that the “European Journal of Medicine published a report and concluded that exposure to high level of pollutants lead to a high risk of developing DVTs and PEs. Massimo Franchini, dept [sic] of Transfusion and Hematology.” However, the Program was unable to identify a publication that met those criteria, and instead identified two publications which the petitioner may have intended to reference—a 2016 study and a 2017 letter to the editor. Because it was

Because Baccarelli *et al.* and the two Franchini *et al.* publications described in footnote 11 are not epidemiologic studies of deep vein thrombosis or pulmonary embolism in 9/11-exposed populations, they do not meet the threshold for inclusion in the evidence evaluation established in Program policy, as described above, even though they qualify as sufficient medical basis for the petition to be considered valid. Therefore, based on Program policy, these articles were not further reviewed.

D. Review of Scientific and Medical Information and Administrator Determination

The Program policy on the addition of non-cancer health conditions to the List directs the Program to conduct a literature review on the health condition(s) petitioned.¹² Petition 021 requested the addition of deep vein thrombosis and pulmonary embolism. Deep vein thrombosis occurs when a blood clot forms in a deep vein, usually in the legs or pelvis; a pulmonary embolism occurs when a clot breaks loose and travels through the bloodstream to an artery in the lungs, causing a blockage.¹³

In response to Petition 021, the Program conducted a review of the scientific literature on deep vein thrombosis and pulmonary embolism to identify peer-reviewed, published studies of the health conditions in the 9/11-exposed population.¹⁴ No studies meeting the Program’s criteria for further evaluation were identified in this literature review.

not possible to determine which one was intended by the petitioner, the Program determined both would be considered and that, together, both met the medical basis requirement. Franchini M, Mengoli C, Cruciani M, Bonfanti C, Mannucci PM [2016], *Association Between Particulate Air Pollution and Venous Thromboembolism: A Systematic Literature Review*, *Eur J Intern Med* 27:10–13; Franchini M, Mannucci PM [2017], *Letter to the Editor: More on Air Pollution and Venous Thromboembolism*, *Eur J Intern Med* 37(2017):e11.

¹² *Supra* note 3.

¹³ See <https://www.cdc.gov/ncbddd/dvt/facts.html>; <https://www.nhlbi.nih.gov/health-topics/venous-thromboembolism#Signs,-Symptoms,-and-Complications>.

¹⁴ Databases searched include: CINAHL, Embase, NIOSHTIC-2, ProQuest Health & Safety, PsycINFO, Ovid MEDLINE, Scopus, Toxicology Abstracts/TOXLINE, and WTC Health Program Bibliographic Database. Keywords used to conduct the search include: Deep vein thrombosis, venous thromboembolism, venous thrombosis, phlebitis, thrombophlebitis, venous thrombotic event, pulmonary embolism, pulmonary infarction, pulmonary thromboembolism, and pulmonary thrombosis. The literature search was conducted in English-language journals on January 22, 2019.

E. Administrator’s Final Decision on Whether To Propose the Addition of Deep Vein Thrombosis and/or Pulmonary Embolism to the List

Pursuant to PHS Act, sec. 3312(a)(6)(B)(iv) and 42 CFR 88.16(a)(2)(iv), the Administrator has determined that insufficient evidence is available to take further action at this time, including proposing the addition of deep vein thrombosis and/or pulmonary embolism to the List (pursuant to PHS Act, sec. 3312(a)(6)(B)(ii) and 42 CFR 88.16(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, sec. 3312(a)(6)(B)(iii) and 42 CFR 88.16(a)(2)(iii)). The Administrator has also determined that requesting a recommendation from the STAC (pursuant to PHS Act, sec. 3312(a)(6)(B)(i) and 42 CFR 88.16(a)(2)(i)) is unwarranted.

For the reasons discussed above, the Petition 021 request to add deep vein thrombosis and pulmonary embolism to the List of WTC-Related Health Conditions is denied.

F. Approval To Submit Document to the Office of the Federal Register

The Secretary, HHS, or his designee, the Director, Centers for Disease Control and Prevention (CDC) and Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), authorized the undersigned, the Administrator of the WTC Health Program, to sign and submit the document to the Office of the Federal Register for publication as an official document of the WTC Health Program. Robert Redfield M.D., Director, CDC, and Administrator, ATSDR, approved this document for publication on March 19, 2019.

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2019–05690 Filed 3–25–19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AC73

Head Start Service Duration Requirements

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Head Start currently requires Head Start programs to operate 100-percent of their preschool center-based slots for 1,020 annual hours by August 1, 2021, which would substantially increase the minimum amount of time preschool children must receive Head Start services. We believe the approach to require all center-based programs to increase their hours of operation was too prescriptive and will reduce grant recipients' flexibility to meet the needs of the communities they serve. It would be costly for grantees to meet the increased service-duration requirement and would likely result in a reduction in the number of children served by Head Start. For these reasons, we propose to remove the 100-percent service duration requirement from the HSPPS. We also propose technical changes to our Program Structure regulations.

DATES: Submit either electronic or written comments by May 28, 2019.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, Planning, Oversight, and Policy Division Director, (202) 358–3263, OHS_NPRM@acf.hhs.gov. Deaf and hearing impaired individuals may call

the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - Executive Order 13771
 - Head Start and Service Duration
 - Goal of This NPRM: Reducing Burden on Local Grantees
- II. Statutory Authority To Issue NPRM
- III. Section by Section Discussion on Proposed Changes to the HSPPS Final Rule
 - Section 1302.21 Center-Based Option
 - Section 1302.24 Locally-Designed Program Option Variations
- IV. Regulatory Process Matters
 - Regulatory Flexibility Act
 - Unfunded Mandates Reform Act
 - Treasury and General Government Appropriations Act of 1999
 - Federalism Assessment Executive Order 13132
 - Congressional Review
 - Paperwork Reduction Act of 1995
 - Regulatory Planning and Review
 - Executive Order 12866, Executive Order 13563, and Executive Order 13771
- V. Regulatory Impact Analysis
 - Need for Regulatory Action
 - Transfer Analysis
 - Cost-Benefit Analysis
 - Accounting Statement: Table of Quantified and Non-Quantified Benefits, Costs, and Transfers
 - Table 1: Benefits and Costs of Removing the 100 Percent Service Duration Requirement
 - List of Subjects

I. Background

We reviewed the HSPPS final rule, 81 FR 61294, September 6, 2016. Through our review, we identified the 100-percent service duration requirement for center-based programs at § 1302.21(c)(2)(iv) as a regulatory provision that could interfere with how local programs determine what works best for their communities. This requirement would also impose a high cost on providers and result in fewer children being served in the Head Start program.

We propose to remove the 100-percent service duration requirement from the HSPPS. We also propose technical changes to Subpart B—Program Structure. The first change removes reference to the requirement for Head Start programs to operate 50 percent of their center-based slots for 1,020 annual hours. In January 2018, the Acting Secretary exercised his authority to waive this requirement, which

effectively eliminated it by lowering the 50 percent requirement to 0 percent. Additionally, we propose several other technical changes within Subpart B to remove references to 1,020 annual hours and to remove an outdated provision. These changes are technical fixes that will not alter the substance of the HSPPS final rule, but will ensure that active Head Start requirements are transparent to the public.

Head Start and Service Duration

The HSPPS are the foundation on which local programs design and deliver comprehensive, high-quality individualized services to support school readiness for the approximately one million children Head Start programs serve each year. Since its inception in 1965, Head Start has been a leader in helping these children reach kindergarten more prepared to succeed in school.

When we revised the HSPPS in 2016, it was the first comprehensive revision of the standards since the standards were originally published in 1975. This update reorganized and streamlined the HSPPS with a goal of making it easier for grantees to implement requirements and for the general public to understand them. This revision also reduced the number of federal requirements by approximately one-third with a goal of lessening the regulatory burden on programs.

Our decision to require, in the HSPPS, all Head Start center-based programs to offer at least 1,020 annual hours of service for all preschoolers by August 1, 2021, was grounded in the latest research on child development and promotion of school readiness for low-income children. We consulted with experts, researchers, and practitioners, as well as recommendations from the Secretary's Advisory Committee Final Report on Head Start Research and Evaluation.¹ The Committee considered the results of the Head Start Impact Study, a randomized controlled trial that studied a sample of children who participated in Head Start in 2002–2003 and followed them through third grade.² The Committee concluded that the initial impact of Head Start is “in line with the magnitude of findings from

¹ *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services. See https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf.

² Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). *Third grade follow-up to the Head Start impact study final report*. U.S. Department of Health and Human Services Office of Planning, Research and Evaluation.

other scaled-up . . . center-based programs for preschoolers . . .” but also acknowledged that “larger impacts may be possible, e.g., by increasing dosage in . . . Head Start or improving instructional factors in Head Start.”³ The report determined that a key factor for Head Start to realize its potential is “making quality and other improvements and optimizing dosage within Head Start.” While exposure to more high-quality early education services can benefit low-income children in terms of developmental outcomes, the tradeoffs associated with providing longer services for some children at the expense of providing no services for other children are too severe.

We also considered that in order to support longer service duration, programs would likely have to serve significantly fewer children in order to increase service hours. During the public comment period for the 2015 notice of proposed rulemaking (NPRM) that proposed longer service duration requirements for Head Start centers, most comments were on the proposed service duration requirements. Specifically, the NPRM did propose to require Head Start center-based programs to operate at a minimum of 6 hours per day and 180 days per year. The NPRM was more rigid in that it required specific hours per day programs were required to operate, rather than a more flexible annual hours approach, or a phase-in period, which would have afforded programs time to meet this requirement. Moreover, it did not allow the Secretary flexibility to lower the requirement if sufficient funding was not available to mitigate a slot loss. Some commenters supported these requirements regardless of available funding. However, the vast majority of commenters stated that while longer service duration may be more beneficial for children, they would not support the policy without adequate funding because it would deprive many children of early learning opportunities due to a decrease in available Head Start slots. Another group of commenters opposed longer service duration requirements regardless of funding because such requirements would impose a one-size-fits-all model by the federal government and might prevent creative and innovative program designs that would be more responsive to community needs.

In response to commenters’ concerns and in recognition of the concerns about a potential reduction in children served, the HSPPS final rule provided the

Secretary flexibility to balance the policy goal of providing all Head Start preschoolers with increased service duration against the potential disruption and slot loss such a policy might create in the absence of additional funding from Congress. If the Secretary made a determination that sufficient funding would not be available to mitigate a substantial reduction in Head Start slots, he or she could choose to lower the 50-percent duration threshold on or before February 1, 2018 and the 100-percent duration threshold on or before February 1, 2020.⁴

Goal of This NPRM: Reducing Burden on Local Grantees and Maximizing Grantee Flexibility

The goal of this NPRM is to eliminate the 100-percent requirement to reduce burden on grantees, restore programs’ flexibility to design program schedules that best meet their community needs, and prevent a possible large reduction in children served in Head Start programs as the result of a federal requirement. Programs can still offer full-day, full-year services if that schedule meets their community needs and is approved through their grant application.

We believe the requirement to provide 1,020 annual hours of services for all preschool center-based slots by August 1, 2021 may be overly prescriptive and may not allow programs enough autonomy to decide what is best for the communities and families they serve. We believe that by eliminating the 100-percent service duration well in advance of the August 1, 2021 effective date, we can ensure programs do not make unwanted and unnecessary changes to their program operations.

In addition, given that Congress has not appropriated sufficient additional funding to support increased service duration since the publication of the 2016 HSPPS final rule, it is unlikely that the 100-percent requirement will be fully funded prior to the date when programs will have to comply. For fiscal year (FY) 2018, Congress appropriated \$260 million to increase service duration. However, this available funding is not sufficient for Head Start programs to move 100-percent of their slots to 1,020 annual hours. Therefore, if the 100-percent requirement were to go into effect, it would likely result in a substantial reduction in the number of children served by the Head Start program. If we eliminate this requirement through the rulemaking process, rather than wait for the Secretary to make a determination

closer to February 1, 2020, we will provide grantees additional time to thoughtfully plan for how to best use existing federal resources to continue to prepare children from low-income families to succeed in school and in life. Even if we receive additional funding in the next fiscal year to increase service duration, we believe programs are in the best position to decide whether or not full-day/full-year services work best for the communities they serve.

II. Statutory Authority To Issue NPRM

OHS publishes this NPRM under the authority granted to the Secretary of Health and Human Services under sections 641A and 644, of the Head Start Act (Act) (42 U.S.C. 9836a and 9839), as amended by the Improving Head Start for School Readiness Act of 2007. In these sections, the Secretary is required to establish performance standards for the Head Start and Early Head Start programs, as well as federal administrative procedures. Specifically, the Act requires the Secretary to “. . . modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs.”⁵

III. Section-by-Section Discussion on Proposed Changes to the HSPPS Final Rule

We propose the following changes to the HSPPS final rule, under Subpart B part 1302 Program Operations at §§ 1302.21 and 1302.24. We believe these changes will reduce costly regulatory burden and to afford programs optimum flexibility to decide what is best for their communities. These changes will ensure the HSPPS are accurate, up to date, and transparent for the public.

Section 1302.21 Center-Based Option

This section includes provisions that would require programs to increase hours of program operations in Head Start centers from previous minimums equivalent to 448 annual hours to 1,020 annual hours by August 1, 2021, with an interim requirement for 50 percent of center-based slots to operate for 1,020 annual hours by August 1, 2019. We propose to remove language related to the 50-percent requirement, which the Secretary effectively eliminated with his determination in the **Federal Register**, at 83 FR 2743, to reduce the requirement to zero percent as of January 2018, and to eliminate the requirement for 100 percent of Head

³ *Ibid.* (p.30).

⁴ See § 1302.21(c)(3) in the HSPPS final rule.

⁵ See § 641A(a)(1) of the Head Start Act, 42 U.S.C. 9836a.

Start center-based slots to operate for 1,020 annual hours by August 1, 2021.

Additionally, we propose to remove all pertinent language that requires Head Start center-based programs to operate for 1,020 annual hours. Specifically, in paragraphs (c)(2)(i) and (ii) of this section, we propose to remove the phrase, “Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (v) of this section.” We also propose to remove paragraphs (c)(2)(iii), (iv), and (v) and (c)(3), (4), and (5) in their entirety. Finally, we propose to re-designate paragraph (c)(6) as paragraph (c)(3). The proposed changes to this section would leave in place the long-standing Head Start center-based service duration minimums described in paragraphs (c)(2)(i) and (ii): A minimum of 3.5 hours per day for 160 days per year if operating 5 days per week or 128 days if operating for 4 days per week and a minimum of 3.5 hours per day for 128 days per year if operating double sessions four days per week.

Section 1302.24 Locally-Designed Program Option Variations

This section allows programs to request to operate non-standard program options to better meet the unique learning needs of the children and community, while still delivering the full range of Head Start services and achieving program goals. This section allows programs to request to waive requirements in § 1302.21(c)(2)(iii) and (iv) for longer service duration. Because we propose to remove all of the requirements related to longer Head Start center-based service duration from the final rule, we propose to remove any related references in this section.

In § 1302.24(c)(1), we propose to remove references to § 1302.21(c)(2)(iii) and (iv) and replace with a reference to paragraph (c)(2). We also propose to remove § 1302.24(c)(3) entirely, and we propose to re-designate § 1302.24(c)(4) as paragraph (c)(3). We propose to re-designate § 1302.24(c)(5) as paragraph (c)(4), wherein we propose to change the reference to the former § 1302.24(c)(4) to new paragraph (c)(3), and replace references to § 1302.21(c)(2)(iii) and (iv) with a reference to § 1302.21(c)(2).

Finally, we propose to remove § 1302.24(d) in its entirety. This provision references July 31, 2018, a date that has passed, and therefore is no longer necessary.

IV. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),⁶ as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule’s economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach.

The term “small entities,” as defined in the RFA, 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. Under this definition, some Head Start grantees may be small entities. However, in accordance with the RFA, we certify this proposed rule would not have a significant economic impact on a substantial number of small entities.

In this NPRM, we are not imposing a negative impact on small entities so we do not need to consider relief. The action we propose here is intended to ensure accountability for federal funds is consistent with the purposes of the Head Start Act and is not duplicative of other requirements. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA)⁷ was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately \$150 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

⁶ See 5 U.S.C. 605(b).

⁷ See 2 U.S.C. 1501 *et seq.*

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law.

We believe it is not necessary to prepare a family policymaking assessment,⁸ because the action we propose in this NPRM will not have any impact on the autonomy or integrity of the family as an institution. However, if you think this action would have a negative effect on family well-being, please submit a comment explaining why (see **ADDRESSES**).

Federalism Assessment Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This proposed rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review “major” rules issued by federal agencies before the rules take effect.⁹ The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-

⁸ See Public Law 105–277.

⁹ 5 U.S.C. 802(a).

based enterprises in domestic and export markets.¹⁰ This action is a major rule because it will likely result in an annual effect of more than \$100 million in transfers on the economy.

Paperwork Reduction Act of 1995

Section 1302 does not contain new information collection requirements. The Office of Management and Budget regulations define “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media.¹¹ This includes requests for information to be sent to the government, such as forms, written reports, and surveys, recordkeeping requirements, and third-party or public disclosures.¹² This action does not include any information collection requirements.

Regulatory Planning and Review Executive Order 12866, Executive Order 13563, and Executive Order 13771

Executive Orders 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). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues

arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and a “significant” regulatory action is subject to review by the Office of Management and Budget.

This proposed rule, if finalized, would be considered an E.O. 13771 deregulatory action. We estimate that this rule generates \$395,000 in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated costs of this rule can be found in the subsequent analyses.

HHS believes to reduce the 100-percent service duration threshold to zero percent is an economically significant regulatory action within the meaning of E.O. 12866 because it will likely have an economic impact of \$100 million or more on the economy in transfers.

The \$100 million threshold applies, in pertinent part, to the impact of the proposed or final regulation in any one year, and it includes benefits, costs, or transfers in any one year.

We present details on the estimated cost savings in terms of planning, flexibility, and certainty for programs in the Regulatory Impact Analysis (RIA). The RIA below evaluates the economic impact, in terms of transfers and attempts to quantify transfers from children who would receive longer service duration to children who would lose services under the current HSPPS requirement absent additional funding.

V. Regulatory Impact Analysis

Need for Regulatory Action

OHS included the requirement in the HSPPS final rule for 100 percent of Head Start preschool center-based slots to receive 1,020 annual hours of services by August 1, 2021 in an attempt to respond to research in early education, as well as advice from experts, on what features of early childhood programs promote strong outcomes for children. However, this requirement may have been too prescriptive for all communities that Head Start serves. Removing this requirement and reverting to previous minimums will restore more local flexibility to grantees and provide them the ability to determine what length of services best meet the unique needs of their communities. Furthermore, tens of thousands of Head Start slots would need to be cut in order for programs to

meet this requirement by the specified deadline.

While it is clear that exposure to more high-quality early education services can benefit low-income children in terms of developmental outcomes, the tradeoffs associated with providing longer services for some children at the expense of providing no services for other children are less clear. For instance we do not have research that indicates providing a smaller number of children with longer services (for instance, providing 15 children with a full day of Head Start, and another 5 children with no Head Start services) is more beneficial for society overall than using the same amount of resources to provide shorter services for a larger number of children (for instance, providing 20 children with a partial day of Head Start). There is not sufficient evidence to support favoring longer service hours for some children at the expense of providing no services to others. As a result, we believe the best option is to provide flexibility to service providers so they are able to best serve the needs of their community.

In addition, the HPPSS rule imposes substantial burden of affected entities. In particular, transitioning services to meet new regulatory requirements requires significant planning. Removing this requirement through the rulemaking process promotes transparency from the federal government and provides as much notice to grantees as possible, which improves their ability to plan while reducing burden. Therefore, removing the 100-percent service duration requirement at this time will result in cost savings for grantees in terms of planning time.

Overall, the 100-percent service duration policy is being proposed for elimination in order to provide as much flexibility to grantees as possible to better serve their individual communities, and to eliminate unnecessary regulatory burden.

Transfer Analysis

Under the current HSPPS, Head Start programs are required to serve preschool children in center-based programs for at least 1,020 hours per year starting in program year 2021–2022. To estimate the transfers associated with removing this requirement for each grantee, we used the approach detailed in this section. In general, we rounded cost estimates throughout this analysis. These rounded cost estimates should not be interpreted as overly precise, but instead represent our best estimation given limitations.

¹⁰ 5 U.S.C. Chapter 8.

¹¹ 5 CFR 1320.3(h).

¹² 5 CFR 1320.3(c).

We first calculate the average incremental cost per Head Start center-based slot (as opposed to the full cost per slot) to move a slot from its current service level to 1,020 annual hours of service. To do this, we use information detailed in the applications OHS received in FY 2016 from grantees applying for funds to increase service duration.¹³ By examining the information from these applications, we determine that the average incremental cost to move a slot from its current service level to 1,020 annual hours of service is approximately \$3,700 per slot. We calculate this incremental cost per slot by taking the total FY 2016 funding awarded to increase Head Start service duration (\$254.7 million)¹⁴ and dividing by the total number of slots that grantees moved to 1,020 hours with that funding (69,200 slots). For simplicity, we assume that the cost per slot does not change in real terms over time.

Based on FY 2018 data from the Head Start Grant Application and Budget Instrument (GABI),¹⁵ we also know that approximately 259,862 slots would still need to increase service duration to meet the 1,020 annual hour requirement. By multiplying this number of slots by the incremental cost per slot estimated above, we estimate that this requirement under the current regulation would require approximately \$956.6 million in additional resources each year to maintain caseload. However, in March 2018 Congress appropriated an additional \$260 million in the Consolidated Appropriations Act of 2018 to increase hours of program operation in Head Start. Therefore, we subtract this amount from the \$956.6 million estimated above and conclude that the removal of this 1,020-hour requirement from the HSPPS would result in annual transfers of approximately \$696.6 million from the children who would have received longer service duration to the children who would have lost services under the

current regulation, starting in program year 2021–2022.

We also calculate the amount of Head Start slot loss the 100-percent requirement would result in if it went into effect beyond what has been provided in FY 2016 and FY 2018. We do this by first calculating the average total cost of a Head Start slot. We take the total Head Start grants awarded in FY 2018 excluding duration funds to be awarded by March 31, 2019 (\$6,725,686,353) and adjust for inflation to make this figure equivalent to 2016 dollars,¹⁶ which results in a total of approximately \$6.45 billion. We then divide this figure by the total Head Start-funded enrollment for FY 2018 (717,947). This results in an average cost per slot of \$8,986. We can then divide the total cost to increase service duration for the remaining Head Start slots (\$696.6 million) by this average cost of a Head Start slot (\$8,986) and determine that, under the current regulation, and without additional funding, this requirement would result in a loss of approximately 77,522 Head Start slots. For simplicity, we assume that slot loss due to this requirement is fixed over time because of substantial uncertainty involving the evolution of appropriations and cost per slot over time. We invite public comment on this assumption and on the methodology for these calculations.

An alternative course of action would be to do nothing and leave the requirements at 1302.21(c)(2)(iv) and (3)(ii) in place. We carefully considered this option. Under this option, all Head Start programs would be required to provide 1,020 annual hours of program operations for 100 percent of their center-based slots by August 1, 2021; however, the Secretary could also reduce this percentage of slots by February 1, 2020 to some lower percentage, including possibly to zero percent. Given that the Secretary exercised his authority, this course of action would result in substantial uncertainty for Head Start grantees and participants and potential Head Start grantees and participants in what the service duration requirements would be in the next several years. Additionally, without additional funding, an estimated 77,522 slots would be lost in order to meet the requirement within grantees' existing budgets.

Cost-Benefit Analysis

By removing the requirement for programs to provide 1,020 annual hours of service for 100 percent of their Head

Start center-based slots, Head Start management staff will realize savings in terms of planning time to prepare for the changes that would have been necessary to meet this requirement. For most grantees, we assume this would involve the time of the program director and the education manager. We assume, on average, grantees would require the equivalent of two weeks of planning time for the program director, for a total of 80 work hours, and 20 hours of planning time for the education manager. We request public comment on these assumptions regarding the staff involved in planning and the amount of planning time.

Using data from the 2018 Program Information Report (PIR),¹⁷ we determine that the average annual salary for a Head Start program director is \$80,330. Assuming 52 paid weeks in a year, and a 40-hour work week (2,080 total hours per year), this results in an average hourly rate of \$38.62 for program directors. We adjust this hourly rate to account for overhead and benefits by multiplying by 2, resulting in an hourly rate of \$77.24. We then multiply this hourly rate by 80 hours of planning time, resulting in a cost savings of approximately \$6,180 per program under the proposed rule. We then multiply this figure by 1,035, which is the total number of programs that have Head Start center-based slots not currently meeting 1,020 annual hours, to estimate a cost savings of \$6.4 million associated with planning time for program directors that would no longer be necessary. We adjust this figure for inflation to make it equivalent to 2016 dollars, which results in a cost savings of approximately \$6.13 million associated with directors' planning time.

Next, again using data from the 2018 PIR, we determine that the average annual salary for a Head Start education manager is \$54,541. Assuming 52 paid weeks in a year, and a 40 hour work week (2,080 total hours per year), this results in an average hourly rate of \$26.22 for education managers. We adjust this hourly rate to account for overhead and benefits by multiplying by 2, resulting in an hourly rate of \$52.444. We then multiply this hourly rate by 20 hours of planning time, resulting in a cost savings of \$1,049 per program. We then multiply this figure by 1,035, the total number of programs with slots not

¹³ Congress appropriated \$294 million in FY 2016 for Head Start grantees to increase service duration.

¹⁴ \$254.7 million of the \$294 million appropriated in FY 2016 to increase service duration was awarded to Head Start preschool programs and the remainder was awarded to Early Head Start (EHS) programs to support them in meeting the requirement that all EHS center-based slots receive 1,380 annual hours of service.

¹⁵ The GABI is a uniform OMB-approved application and budget instrument to standardize the format for the collection of program-specific data grantees provide with a continuation grant application. Head Start grantees provide a range of data on their proposed budgets including non-federal share, any other sources of funding, program options, and program schedules.

¹⁶ Using the Gross Domestic Product Deflator (<https://www.bea.gov/>).

¹⁷ The PIR is a survey of all grantees that provides comprehensive data on Head Start, Early Head Start and Migrant Head Start programs nationwide. Data collection for the PIR is automated to improve efficiency in the collection and analysis of data. Head Start achieves a 100 percent response rate annually from approximately 2,600 respondents.

meeting 1,020 annual hours), resulting in an estimated cost savings of \$1.09 million associated with planning time for education managers that would not be necessary under the proposed rule. We adjust this figure for inflation to make it equivalent to 2016 dollars, which results in a cost savings of approximately \$1.04 million associated with education managers' planning time. Together, this results in a total cost savings in planning time for program directors and education managers of \$7.18 million (in FY16 dollars). We assume these costs savings will be realized in program year 2020–2021, the year prior to implementation of the 100 percent service duration requirement.

In addition to savings in planning time, this regulation will allow grantees more flexibility to provide the duration of services that best meets the needs of their communities, including the children living in their communities. Head Start has traditionally been a program with local flexibility as a core operating principle. Through community needs assessments, community partnerships, and other community relationships, grantees aim to understand exactly what kinds of Head Start services are most needed and wanted by families in their community. This regulation will restore grantees' flexibility to meet that goal.

However, programs will also require time to read and understand the new

requirements set forth in this rule. We estimate that Head Start program directors would be responsible for this, and that it would take approximately five hours of their time to read, understand, and implement these requirements. We request public comment on these assumptions regarding the staff involved in the amount of time to read, understand, and implement these new requirements. Using the same assumptions above for a program director's hourly rate, we assume a cost of \$386.00 per program to read and understand these requirements. We multiply this cost by 1,035 programs for a total approximate cost of \$400,000.

We subtract this cost from the cost savings in planning time described above, resulting in a net cost savings of \$6.78 million associated with this rule (in FY16 dollars). We assume these costs savings will be realized in program year 2020–2021, the year prior to implementation of the 100 percent service duration requirement.

Accounting Statement—Table of Quantified and Non-Quantified Benefits, Costs, and Transfers

As required by OMB Circular A–4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule. We decided to use a 10-year window for this regulatory impact analysis. As required by the Office of Management and Budget

(OMB), we discount costs at 3 percent and 7 percent and have included total present value as well as annualized value of these estimates in our analyses below.

Most of the costs associated with this rule will be realized in the first year after publication (2019–2020). Most of the cost savings associated with this rule will be realized in the program year prior to the one in which the 100 percent duration requirement would have gone into effect (2020–2021). Finally, the transfers associated with this rule will recur annually.

These costs and cost savings were then discounted and annualized using the 10 year window and the OMB discounting rates. In total, the 10-year present value of the costs associated with the proposed changes in this NPRM are estimated to be \$355,395, discounted at 3 percent, and \$305,158, discounted at 7 percent. The annualized costs of the proposed changes in this NPRM are estimated to be \$41,971.82 discounted at 3 percent, and \$49,853.05, discounted at 7 percent.

The 10-year present value of the cost savings associated with the proposed changes in this NPRM are estimated to be \$6,190,163, discounted at 3 percent, and \$5,116,457 discounted at 7 percent. The annualized cost savings of the proposed changes in this NPRM are estimated to be \$731,052.91 discounted at 3 percent, and \$604,249.15, discounted at 7 percent.

TABLE 1—BENEFITS AND COSTS OF REMOVING THE 100 PERCENT SERVICE DURATION REQUIREMENT

Benefits (cost-savings)	Annualized value by discount rate (millions)	
	3 Percent	7 Percent
Quantified Cost Savings	\$.73	\$.60
Qualitative Benefits	Allows grantees more flexibility to provide the duration of services that best meets the needs of their local communities, including the children and families living in those communities.	
Costs	3 Percent	7 Percent
Quantified Costs	\$.42	\$.50
Transfers		
Quantified Transfers	\$696.6 million annually from 2019 to 2028, starting in 2021, from children who would have received full-day, full-year services under the current requirements to children who would not have received services under the current requirements.	

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: November 2, 2018.

Alex M. Azar II,

Secretary.

Proposed Regulation Text

For reasons stated in the preamble, we propose to amend 45 CFR part 1302 as follows:

PART 1302—PROGRAM OPERATIONS

■ 1. The authority citation for part 1302 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. In § 1302.21, revise paragraph (c) to read as follows:

§ 1302.21 Center-based option.

* * * * *

(c) * * *

(2) *Head Start.* (i) A program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day.

(ii) If a program operates a double session variation, it must provide classes for four days per week for a minimum of 128 days per year and 3.5 hours per day. Each double session class staff member must be provided adequate break time during the course of the day. In addition, teachers, aides, and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment, and to give individual attention to children entering and leaving the center.

(3) *Calendar planning.* A program must:

(i) Plan its year using a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather; and,

(ii) Make every effort to schedule makeup days using existing resources if hours of planned class operations fall below the number required per year.

* * * * *

■ 3. In § 1302.24, revise paragraph (c) and remove paragraph (d).

The revision reads as follows:

§ 1302.24 Locally-designed program option variations.

* * * * *

(c) *Waiver requirements.* (1) The responsible HHS official may waive one or more of the requirements contained

in § 1302.21(b), (c)(1)(i), and (c)(2); § 1302.22(a) through (c); and § 1302.23(b) and (c), but may not waive ratios or group size for children under 24 months. Center-based locally-designed options must meet the minimums described in section 640(k)(1) of the Act for center-based programs.

(2) If the responsible HHS official determines a waiver of group size for center-based services would better meet the needs of children and families in a community, the group size may not exceed the limits below:

(i) A group that serves children 24 to 36 months of age must have no more than ten children;

(ii) A group that serves predominantly three-year-old children must have no more than twenty children; and

(iii) A group that serves predominantly four-year-old children must have no more than twenty-four children.

(3) To receive a waiver under this section, a program must provide supporting evidence that demonstrates the locally designed variation effectively supports appropriate development and progress in children's early learning outcomes.

(4) To receive a waiver of service duration, a program must meet the requirement in paragraph (c)(3) of this section, provide supporting evidence that it better meets the needs of parents than the applicable service duration minimums described in § 1302.21(c), § 1302.22(c), or § 1302.23(c), and assess the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes.

[FR Doc. 2019-05363 Filed 3-25-19; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 181218999-9214-01]

RIN 0648-BI68

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 6

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 6 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (CMP FMP), as prepared by the South Atlantic Fishery Management Council (Council). This proposed rule would revise the Atlantic migratory group king mackerel commercial trip limit in the Atlantic southern zone during the March through September fishing season. The purpose of this proposed rule is to support increased fishing activity and economic opportunity while continuing to constrain harvest to the annual catch limit and providing for year-round access for the commercial sector.

DATES: Written comments must be received by April 25, 2019.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA-NMFS-2019-0017,” by either of the following methods:

- **Electronic submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0017 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

- **Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in required fields if you wish to remain anonymous).

Electronic copies Framework Amendment 6 may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-amendment-6-atlantic-king-mackerel-commercial-trip-limits>.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagics fishery in the Atlantic region is managed under the CMP FMP and includes king mackerel and Spanish mackerel, and also includes cobia in the Gulf of Mexico. The Council and the Gulf of Mexico Fishery Management Council jointly manage the CMP FMP. The CMP FMP was prepared by both Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Act. Under the CMP FMP, each Council has the ability to develop individual framework amendments to the FMP for certain actions that are specific to each region.

Background

The Atlantic migratory group of king mackerel (Atlantic king mackerel) is divided into a northern zone and a southern zone. The trip limit system for the Atlantic southern zone (the EEZ from the North Carolina/South Carolina boundary to the Miami-Dade/Monroe County, FL, boundary (25°20'24" N)) was implemented on May 11, 2017, through Amendment 26 to the FMP (68 FR 17387, April 11, 2017). The fishing year for the commercial sector for Atlantic king mackerel is March 1 through the end of February. The Atlantic southern zone has two commercial seasons, March 1 through September 30, and October 1 through the end of February. The Atlantic southern zone quota is allocated into two seasonal quotas: 60 percent of the zone quota is allocated to March 1 through September 30 (Season 1) and 40 percent of the zone quota is allocated to October 1 through the end of February (Season 2). Any unused quota from Season 1 transfers during the fishing year to Season 2. There is no provision to allow the carryover of any unused quota at the end of Season 2. When the quota for a season is reached or expected to be reached, commercial harvest of king mackerel in the Atlantic southern zone is prohibited for the remainder of the season.

During Season 1 in March, in the area between the Flagler/Volusia County, FL, boundary (29°25' N lat.), and the Miami-Dade/Monroe County, FL, boundary (25°20.24" N lat.), the trip limit is 50 fish. During Season 1 from April 1 through September 30, the trip limit is 75 fish, unless NMFS determines that 75 percent or more of the Atlantic southern zone quota for the first season has been landed, then the trip limit is 50 fish.

Subsequent to the implementation of Amendment 26 to the CMP FMP, commercial fishermen from Florida's east coast expressed concern to the

Council about the revised commercial trip limits for king mackerel in some of the areas in the Atlantic southern zone, especially the Season 1 (March through September) trip limits in the EEZ off Volusia County, FL. Comments from stakeholders indicated that commercial fishermen operating out of Volusia County, FL, travel farther offshore than elsewhere off the east coast of Florida to target king mackerel and often complete multi-day commercial trips. The 50-fish commercial trip limit during the month of March makes it challenging for commercial fisherman targeting king mackerel in this area to earn enough money to pay for the cost of a trip, potentially causing undue hardship to fishermen. At their April 2017 meeting, the Council's Mackerel Cobia Advisory Panel recommended that the Council review the commercial trip limits in place for the Atlantic southern zone and consider a different trip limit that would support the concerns of the commercial fishermen operating out of Volusia County, FL, while still allowing year-round access to king mackerel by the commercial sector. The Council then developed, and subsequently approved, Framework Amendment 6 to the CMP FMP. Framework Amendment 6 would revise some of the commercial trip limits for Season 1 (March 1 through September 30) in the southern zone, but would not revise the commercial trip limits for Season 2 (October 1 through the end of February). Additionally, Framework Amendment 6 would not revise the current 3,500 lb (1,588 kg) year-round trip limit for Atlantic migratory group king mackerel north of the Flagler/Volusia County, FL, boundary in the southern zone.

Management Measure Contained in This Proposed Rule

This proposed rule would revise the Atlantic king mackerel commercial trip limits in the southern zone in the EEZ south of the Flagler/Volusia County, FL, boundary during Season 1. The revised trip limit would be increased from 50 fish to 75 fish for the month of March in the EEZ between the Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary. The trip limit would also be increased from 50 to 75 fish for the month of March in the EEZ between the Volusia/Brevard County, FL, boundary and the Miami-Dade/Monroe County, FL boundary. The proposed rule would also increase the trip limit in the EEZ off Volusia County (between Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary) from April 1 through September 30 from 75 fish to 3,500 lb (1,588 kg).

In summary, if this proposed rule is implemented, the commercial trip limits for Atlantic king mackerel throughout the southern zone would be as described in the following:

North of the Flagler/Volusia County, FL, boundary the limit is 3,500 lb (1,588 kg), year-round.

In the EEZ between the Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary, in the month of March, the trip limit would be 75 fish; from April through September, the trip limit would be 3,500 lb (1,588 kg); from October through January, the limit is 50 fish; and for the month of February the limit is 50 fish, unless NMFS determines that less than 70 percent of the commercial quota for the southern zone's second season has been landed, then the trip limit would be 75 fish.

In the EEZ between the Volusia/Brevard County, FL, boundary and the Miami-Dade/Monroe County, FL, boundary, in the month of March, the trip limit would be 75 fish; from April through September the limit is 75 fish, unless NMFS determines that less than 75 percent of the commercial quota for the southern zone's first season has been landed, then the trip limit is 50 fish; from October through January, the limit is 50 fish; and for the month of February, the limit is 50 fish unless NMFS determines that less than 70 percent of the second season quota has been landed, then the trip limit would be 75 fish.

The revision to the trip limit in the southern zone is expected to provide additional fishing and economic opportunity to king mackerel fishermen in the southern zone and is not expected to negatively impact the Atlantic king mackerel stock.

Measure Contained in This Proposed Rule Not in Framework Amendment 6

In addition to the measures described in Framework Amendment 6 to revise the Atlantic southern zone commercial trip limits, this proposed rule would also incorporate a correction to a commercial trip limit boundary position for the Atlantic king mackerel southern zone. In 50 CFR 622.385(a)(1)(ii), the final rule for Amendment 26 incorrectly specified the Miami-Dade/Monroe County, FL, boundary coordinate. That final rule incorrectly used the position for the Flagler/Volusia County, FL, boundary in one instance instead of the Miami-Dade/Monroe County, FL, coordinate. However, since that final rule was promulgated, these boundary descriptions have been updated. These new boundary descriptions are part of the revisions being proposed in this rule

to implement Framework Amendment 6, and the previous boundary descriptions and coordinates are no longer relevant. Thus, the previous error would be superseded by the boundary descriptions and coordinates listed in 50 CFR 622.385(a)(1)(ii) of this proposed rule for Framework Amendment 6.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 6, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would directly affect businesses that operate in the commercial fishing industry (NAICS code 11411) and harvest king mackerel in Federal waters of the South Atlantic. From 2012 through 2016, an annual average of 702 of vessels landed king mackerel. It is estimated that 605 businesses operate the 702 vessels that on average annually land king mackerel.

Average annual revenue from all species landed by the above 702 vessels vary considerably by state; however, the maximum average revenue is \$86,573 (in 2016 dollars). For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The estimates of average annual revenue indicate that the above 605 businesses are small businesses.

The proposed rule would increase the trip limit from 50 to 75 king mackerel from March 1 through March 30 in Federal waters between the Flagler/Volusia, FL, boundary and Volusia/Brevard, FL, boundary and Volusia/Brevard, FL, boundary and Miami-Dade/Monroe County, FL, boundary. Those Federal waters are the same as Federal waters between the Flagler/Volusia County, FL, boundary and the Miami-Dade/Monroe County, FL, boundary (25°20'24" N). It is estimated that 60 trips would benefit, and there could be an additional 250 lb (113 kg) and \$560 per trip (at the 2016 price of \$2.24 per lb). The 60 trips are expected to be made by 60 vessels, and the average vessel's annual revenue would increase from 1.3 percent to 3.7 percent.

The proposed rule would also increase the trip limit to 3,500 lb (1,588 kg) in Federal waters off Volusia County (between the Flagler/Volusia and Volusia/Brevard lines) from April 1 through September 30. Currently, the limit is 75 king mackerel until 75 percent of the quota is landed, then it reduces to 50 fish. An estimated annual average of 148 trips made by 71 vessels could benefit from the trip-limit increase in Federal waters off Volusia County from April through September; however, if all of these trips were made in areas or during the months when trip limits are unaffected by the proposed rule, there would be no beneficial impacts.

If all of the 148 trips were in Federal waters off Volusia County from April through September, the total benefit for 148 trips could be an additional 56,980 lb (25,846 kg) of king mackerel with a dockside value (in 2016 dollars) of \$127,635, and the average annual increase per vessel would be \$1,798. Hence, the average annual benefit per vessel from the increase in the trip limit from April through September in Federal waters off Volusia County would range from \$0 to \$1,798. These 71 vessels are estimated to be operated by 61 (10 percent) of the average 605 businesses that annually land king mackerel, and the average benefit would range from \$0 to \$2,092 per business.

An average increase in dockside revenue from \$0 to \$1,798 per vessel would represent an increase in average annual revenue from 0 percent to over 11 percent for the average vessel that lands king mackerel in Volusia County or south of Volusia through Dade County. That same average increase in dockside revenue would represent a 0 percent to 5.6 percent in annual revenue for the average vessel that lands king mackerel in counties north of Volusia and 0 percent to 4 percent for the

average vessel that lands king mackerel elsewhere in Florida.

In summary, this rule would not have an adverse economic impact on any small business, and instead would increase annual revenues as described above. Therefore, NMFS expects this proposed rule would not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, King mackerel, South Atlantic, Trip limits.

Dated: March 18, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.385, revise paragraph (a)(1)(ii) and add paragraph (a)(1)(iii) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(ii) In the area between 29°25' N lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, and 28°47'48" N lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31—75 fish.

(B) From April 1 through September 30—3,500 lb (1,588 kg).

(C) From October 1 through January 31—50 fish.

(D) From February 1 through the end of February—50 fish, unless NMFS determines that less than 70 percent of the quota specified in § 622.384(b)(2)(ii)(B) has been landed, then, 75 fish.

(iii) In the area between 28°47'48" N lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, and 25°20'24" N lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary,

king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31—75 fish.

(B) From April 1 through September 30—75 fish, unless NMFS determines

that 75 percent or more of the quota specified in § 622.384(b)(2)(ii)(A) has been landed, then, 50 fish.

(C) From October 1 through January 31—50 fish.

(D) From February 1 through the end of February—50 fish, unless NMFS determines that less than 70 percent of

the quota specified in § 622.384(b)(2)(ii)(B) has been landed, then, 75 fish.

* * * * *

[FR Doc. 2019-05424 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 84, No. 58

Tuesday, March 26, 2019

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–2017–0074]

Supplemental Requirements for Importation of Fresh Citrus From Colombia Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of affirmation of supplemental requirements.

SUMMARY: We are affirming the supplemental requirements we added for the importation of fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia into the United States. In a previous notice, we made available to the public for review and comment supplemental requirements for mitigating pest risks posed by the importation of those commodities from Colombia into the United States. We also made available a pest risk assessment and commodity import evaluation document. After reviewing the comments we received on those documents, we are affirming the supplemental requirements we added to the Fruits and Vegetables Import Requirements database.

DATES: These requirements were authorized for use on fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia beginning February 6, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION: Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the

regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world in an effort to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–3, which includes general import requirements for fruits and vegetables, authorizes the importation of fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia into the United States.

On February 6, 2018, we published in the *Federal Register* (83 FR 5179–5181, Docket No. APHIS–2017–0074) a notice¹ announcing our decision to supplement our requirements² governing the importation of fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia into the United States and requested public comment on these changes. We also made available a pest risk assessment (PRA) and a commodity import evaluation document (CIED). The PRA evaluates the risks associated with the importation of fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia into the United States and the CIED lists the phytosanitary measures necessary to ensure its safe importation into the United States.

We solicited comments concerning the additional measures for 60 days ending April 9, 2018. We received six comments during the comment period. The commenters consisted of State governments, industry representatives, and the general public. We respond to the comments below.

General Comments

A few commenters stated concerns about the phytosanitary risk of importing fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia into the United States but did not address specific provisions of the notice. One such

commenter stated that the risk mitigation measures listed in the notice are not stringent enough to mitigate the import risk of the 11 quarantine pests identified in the PRA.

APHIS believes that the import risk from the pests identified in the PRA will be adequately mitigated by the measures listed in the CIED. In addition, APHIS has used these and similar measures to mitigate risks successfully for pests from other countries in South America, including Argentina, Chile, Peru, and Uruguay.

Two other commenters, representing State governments, commented that their respective States have a range of climates and environments that magnify the risk of infestation from quarantine pests and recommended that APHIS not allow the resumption of imports of fresh citrus from Colombia.

APHIS acknowledges that several States have climates that are hospitable to plant pest infestations and infections. However, the mitigations of the CIED adequately address these risks.

Another commenter stated that we can grow citrus in the United States and should therefore encourage job production domestically.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant pests or noxious weeds within the United States. With respect to the commenter's point about encouraging domestic citrus production, we note that APHIS actively supports the domestic citrus industry through the Citrus Health Response Program and other initiatives.

Brevipalpus Chilensis and Other Mites

A few commenters expressed concerns about the risk to domestic citrus production posed by *Brevipalpus chilensis* and other mites entering the United States via the pathway of fresh sweet orange, grapefruit, mandarin, clementine, and tangerine fruit from Colombia.

B. chilensis is not present in Colombia. *B. obovatus* Donnadieu and *B. phoenicis* (Geijskes) are the two *Brevipalpus* species listed in the PRA because they are vectors of Citrus leprosis virus (CiLV). Both mite species are already present in the United States. APHIS is requiring specific measures in

¹ To view the notice, the PRA, the CIED, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0074>.

² The supplemental requirements were added to the Fruits and Vegetables Import Requirements (FAVIR) database, located at <https://epermits.aphis.usda.gov/manual/index.cfm?action=pubHome>.

the CIED to mitigate the risk of *Brevipalpus* mites following the pathway of citrus. At the packinghouse, fruit must be washed and brushed and any damaged or diseased fruit culled. Fruit must be inspected for mites in Colombia by the Colombian national plant protection organization (NPPO). Fruit will also be inspected for mites by U.S. Customs and Border Protection (CBP) at the port of entry.

Moreover, *Brevipalpus* mites have limited capacity for movement. In order to transmit CiLV, the mites would have to feed on a susceptible part of the plant and acquire CiLV, move onto the fruit, survive washing and brushing, be transported to an area with suitable citrus hosts, and move from the fruit to the new host. It is highly unlikely that this combination of events would occur.

One commenter said that data was lacking to show that cold treatment kills all potential mites in transit. The commenter stated that *B. chilensis* has been shown to survive cold treatments on grapes from Chile.

The required cold treatment is intended to mitigate risk for fruit flies in the genera *Anastrepha* and *Ceratitis*. APHIS has not indicated that the treatment is a requirement for, or effective against, *Brevipalpus* mites. The packinghouse procedures referenced in the previous response will address mite risk.

The commenter also stated that the sieves used at U.S. ports to detect mites are not the correct size to detect immature stages of mites.

The commenter appears to be conflating the mitigation requirements for mites on citrus from Colombia with the systems approach mitigation for *B. chilensis* mites on fruit imported from Chile and Argentina. Sieving for mites is not part of the mitigation requirements proposed for *Brevipalpus* mites on Colombia citrus, nor is it used routinely at U.S. ports of entry.

A commenter requested proof showing that immature *Brevipalpus* mites associated with citrus will be detected through Colombian phytosanitary export protocols, and another stated that numerous mite species exist in Colombia, such as *B. californicus*, *B. lewisi*, and *B. hondurani*, with some never being evaluated as a possible vector for CiLV. The commenters asked that APHIS provide more analysis to show that mites will be adequately mitigated.

APHIS believes that the risk from mites and other pests identified in the PRA will be adequately mitigated by the measures listed in the CIED. In addition, APHIS has used these measures and other equivalent measures to mitigate

risks for pests from other countries in South America including Argentina, Chile, Peru, and Uruguay. APHIS has not detected mites on commercial consignments of citrus from these countries since these measures were implemented.

Another commenter noted that the PRA includes field management practices to reduce the prevalence of *B. obovatus* and *B. phoenicis* during citrus crop production but does not consider or address mitigation measures, processes, or procedures during pre-harvest, postharvest, storage, or shipping.

The PRA states that it did not consider whether any production practices would be used to mitigate the risk of *Brevipalpus* mites. APHIS is requiring specific measures in the CIED to mitigate the risk of *Brevipalpus* mites following the pathway of citrus. At the packinghouse, fruit must be washed and brushed and any damaged or diseased fruit culled. Fruit must be inspected for mites in Colombia by the NPPO. CBP will inspect the citrus fruit for mites at the U.S. port of entry.

A commenter stated that the risk rating in the assessment of *Brevipalpus* should be changed from Low to Medium, noting that the mites are polyphagous, have multiple hosts, are subject to passive dissemination, and can be dispersed over large distances with the wind. The commenter stated that without adequate consideration, fresh fruit can vector the mites into the United States where they can become endemic in backyard citrus trees.

We note that the PRA currently lists the mites, as vectors for CiLV, as Medium for the risk of the mites following the pathway of commercial citrus from Colombia.

A commenter noted that the detection of a mite results in the dismissal of the entire lot for export consideration and asked why the field is not suspended from production until the scope of the pest population can be determined.

Should APHIS dismiss a lot for export consideration, we would not allow continued imports of citrus from the production site where the lot originated in Colombia to the United States until we are satisfied that such consignments will not subject the United States to an unacceptable level of pest risk.

Internal Feeders, Citrus Fruit Borer

Several commenters expressed concern about internal feeders following the pathway of fruit shipped from Colombia into the United States. Two such commenters stated that while scientific literature supports cold treatments designed for tephritid fruit

flies, such treatments are ineffective for many species of Lepidoptera. The commenters asked that we provide evidence that this treatment effectively kills the citrus fruit borer.

The required cold treatment is intended to mitigate risk for fruit flies in the genera *Anastrepha* and *Ceratitis*. APHIS has not represented that the treatment is a requirement for, or effective against, Lepidoptera. APHIS has considered that for most Lepidoptera pests of fruit, inspection is a sufficient mitigation since these pests typically leave damage, frass (caterpillar excrement), and a conspicuous hole. These pests are typically removed by factors inherent in commercial production, including the requirement to produce high quality fruit for sale, culling, and inspection. APHIS has never intercepted these Lepidoptera pests in commercially produced citrus.

Two commenters stated that APHIS provided no data supporting fruit cutting as an effective method for detecting fruit flies and other internal feeders.

APHIS has not proposed that fruit cutting will be used as a standalone mitigation method for fruit flies. The inspection with a small portion of fruit cut is included to identify when high pest populations may be present that could potentially compromise a quarantine treatment. This type of inspection and the numbers used are common to many importation programs.

One commenter asked whether fruit cutting would be sustainable and effective if personnel designated by the NPPO of Colombia conduct the cutting. The commenter stated that commercial consignments from Morocco have failed under a similar systems approach.

Inspectors designated by the NPPO of Colombia have been trained in proper fruit cutting to sample for pests, and all citrus imported into the United States will be subject to additional cutting by CBP in accordance with 7 CFR part 305. With respect to the commenter's reference to pest issues in Morocco, APHIS did not identify fruit cutting in that country's export program as a contributing factor.

Site Visits

Two commenters representing State governments suggested to APHIS that a joint USDA/Florida/California site visit to Colombia be initiated to ensure that risk mitigation approaches are being executed effectively. The commenters opposed the entry of citrus from Colombia into their respective States until such a site visit is made.

APHIS is committed to a transparent process and an inclusive role for

stakeholders in our risk analysis process and we respect the phytosanitary expertise of the State plant health personnel of Florida and California. However, we have not identified the need for additional site visits at this time to evaluate the implementation of the systems approach. Should such site visits occur, we will take the States' requests into consideration.

Regional Pests

A commenter stated that citrus dieback, citrus tristeza, alternaria brown spot, citrus canker, citrus black spot, and sweet orange scab exist in countries in proximity to Colombia production areas, and that Huanglongbing and Asian citrus psyllid exist within Colombia itself. The commenter asked APHIS to list insect vectors (other than *Brevipalpus* mite species) that transmit CiLV, as well as the distribution of such pests. The commenter also asked what disease and pathogen insect vector mitigation measures will be used to protect fresh citrus fruit as a pathway from introducing citrus pathogens and their insect vectors into the United States.

Citrus canker, citrus black spot, and sweet orange scab are not known to occur in Colombia. Although CiLV and Huanglongbing are known to exist in Colombia, citrus fruit is not a pathway of either of those pests in the absence of their insect vectors. The CIED specifies multiple packinghouse procedures for *Brevipalpus*; these procedures will also mitigate Asian citrus psyllid, vector of Huanglongbing.

Risk Documentation

A commenter stated that the documentation provided is incomplete for the resumption of citrus exports from Colombia. The commenter said that PRA appeared to be conducted in 2015 or early 2016, leaving stakeholders uninformed about the intervening 24 months. The commenter added that the proposal moves from a PRA to an operational workplan without a pest risk mitigation document (RMD) in the interim. The commenter stated that with no RMD and operational workplan to protect the industry and environment, there are missing pieces to this effort.

APHIS did not identify any new quarantine pests that could follow the pathway of citrus from Colombia since the PRA was completed; therefore, it is still accurate. The CIED was made available with the February 2018

Federal Register notice (see footnote 1) and provides the risk mitigation structure for the importation of citrus from Colombia. Operational workplans are documents that provide additional

detail regarding day-to-day operations within an export program and can be updated as operational practices within the exporting country change.

Neosilba spp.

A commenter stated that the PRA risk rating should be High for the likelihood of establishment of *Neosilba* spp. as it poses a significant pest risk. The commenter referred APHIS to the Brazilian citrus PRA, which states: "the introduction of *Neosilba* into the continental United States is likely to result in significant increases in costs of production beyond normal fluctuations." Another commenter questioned the effectiveness of fruit cutting as a dependable detection method for *Neosilba* spp. The commenter asked for details about how much fruit is being cut for detection of pests.

APHIS has never intercepted *Neosilba* spp. in commercial citrus. Given the PRA's medium risk rating and the lack of interceptions, APHIS believes that commercial production and inspection are adequate mitigation measures for this pest. APHIS believes that this pest is primarily an invader of overripe, damaged, fallen fruit, and fruit previously infested by tephritid fruit flies. In Brazil some studies have found *Neosilba* spp. to be a primary infesting agent, although some of those studies used dooryard citrus, not commercial fruit. Brazil is the only country where any publications showing damage from *Neosilba* spp. in citrus have been published.

Funding

A commenter asked how APHIS attains funding as part of this action, and whether a trust fund has been established or a Colombian or industry reimbursement is anticipated.

APHIS typically reserves trust funds for preclearance programs. Importation of citrus from Colombia does not include a preclearance program.

Therefore, for the reasons noted above, we are affirming our addition of supplemental requirements for the importation of sweet oranges, tangerines, grapefruit, clementines, and mandarins from Colombia into the United States. The requirements are listed in the FAVIR database, which is available by following the link in footnote 2.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of March 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–05679 Filed 3–25–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0037]

Addition of China to the List of Regions Affected by African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added China to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We are taking this action because of the confirmation of ASF in China.

DATES: China was added to the APHIS list of regions considered affected with ASF on August 6, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling-Heyward, DVM, National Director, Regionalization Evaluation Services, Strategy and Policy, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 851–3350.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

Sections 94.8 and 94.17 of the regulations contain requirements governing the importation into the United States of pork and pork products from regions of the world where ASF exists or is reasonably believed to exist and imposes restrictions on the importation of pork and pork products into the United States from those regions. ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and

Plant Health Inspection Service (APHIS) website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/>.

APHIS receives notice of ASF outbreaks from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other publically available sources the Administrator determines to be reliable. In a report dated August 6, 2018, the veterinary authorities of China reported to the OIE confirmation of an ASF outbreak.

Although the importation of most swine commodities from China into the United States is already restricted based on that country's classical swine fever, foot-and-mouth disease, and swine vesicular disease status, APHIS has determined that it is necessary to impose ASF-related restrictions on the importation of pork and pork products from China into the United States.

Therefore, in response to this outbreak, APHIS has added China to the list of regions where ASF exists or is reasonably believed to exist. As a result, pork and pork products, including casings, from China are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of March 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–05680 Filed 3–25–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will meet in Roanoke, Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects

and funding consistent with Title II of the Act. RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following website: www.fs.fed.us/r8/gwj.

DATES: The meetings will be held on the following dates:

- Friday, March 29, 2019, from 10:00 a.m. to 6:00 p.m., and
- Friday, April 12, 2019, from 10:00 a.m. to 6:00 p.m.

All RAC meetings are subject to cancellation. For updated status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the George Washington and Jefferson National Forests Supervisor's Office, Conference Room, 5162 Valleypointe Parkway, Roanoke, Virginia.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the George Washington and Jefferson National Forests Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Rebecca Robbins, RAC Coordinator, by phone at (540) 265–5173 or via email at rebecca.robbs@usda.gov.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to:

1. Prioritize and recommend projects for Title II funds, and
2. Nominate and vote on a Chairperson.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 25, 2019 to be scheduled on the agenda for the March 29, 2019 meeting; and April 3, 2019 to be scheduled on the agenda for the April 12, 2019 meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meetings. Written comments and requests for time for oral comments must be sent to Rebecca Robbins, RAC Coordinator,

George Washington and Jefferson National Forests Supervisor's Office, 5162 Valleypointe Parkway, Roanoke, Virginia 24019; or by email to rebecca.robbs@usda.gov.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 10, 2019.

Christopher B. French,

Acting Deputy Chief, National Forest System.

[FR Doc. 2019–05717 Filed 3–25–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2019]

Foreign-Trade Zone (FTZ) 151—Findlay, Ohio; Notification of Proposed Production Activity; Whirlpool Corporation (Dishwashers); Findlay, Ohio

Whirlpool Corporation (Whirlpool) submitted a notification of proposed production activity to the FTZ Board for its facility in Findlay, Ohio. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 18, 2019.

The Whirlpool facility is located within Subzone 151E. The facility is used for the production of dishwashers and dishwasher sub-assemblies. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Whirlpool from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Whirlpool would be able to choose the duty rates during customs entry procedures that apply to: Steel screw kits; axial fans; dishwashers; dishwasher sub-assemblies; handles; worm gears; DC motors; single phase AC motors; harnesses with WiFi modules; switches; control assemblies; wire

harnesses; and, light assemblies (duty rate ranges from duty-free to 8.5%). Whirlpool would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Plastic fill hoses; plastic tape; plastic labels; plastic self-adhesive seals; plastic foam seals; plastic reinforced seals; plastic nuts; plastic cable ties; rubber hoses; rubber gaskets; rubber grommets; steel screws; steel nuts; steel helical springs; steel hose clamps; steel latch plates; brass washers; threaded brass inserts; centrifugal pumps; air filters; inner and outer doors; front exterior panels; hinges; spray arms; detergent dispensers; dish rack tracks and mounts; plastic rack wheels; steel wire dish racks; chassis tubs; plastic grommets; lid gaskets; manifolds; solenoid valves; control valves; valve housings; gearboxes; pinion gears; worm gears; bevel gears; synchronous motors; universal AC/DC motors; DC motors; single and multi-phase AC motors; fixed capacitors; dielectric fixed capacitors; fuses; relays; overload protectors; grounding tabs; control panels/user interfaces; consoles; printed circuit assemblies; plastic buttons; LED lamps; wire harnesses; and, internal light fittings (duty rate ranges from duty-free to 8.5%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 6, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

Dated: March 20, 2019.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2019-05733 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-64-2018]

Foreign-Trade Zone (FTZ) 119— Minneapolis-St. Paul, Minnesota; Authorization of Production Activity; AGCO Corporation; Subzone 119M; (Agricultural Equipment and Related Subassemblies and Components); Jackson and Round Lake, Minnesota

On October 11, 2018, AGCO Corporation, operator of Subzone 119M, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 119M, in Jackson and Round Lake, Minnesota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 54314-54315, October 29, 2018). On March 20, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14. The authorization was further subject to a restriction requiring that textile-reinforced rubber hoses, textile-reinforced rubber conveyor belts, textile-reinforced rubber transmission belts, gaskets of textile materials, textile sound absorbers, safety belts of fabric, fabric-reinforced cab isolators, headliners incorporating fabric, windcreens of fabric, sound suppressors incorporating fabric, sun visors of fabric, and seats with fabric surfaces be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: March 20, 2019.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2019-05731 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Panama Trade Promotion Agreement (U.S.-Panama TPA)

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 28, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202-482-2043, Email: Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title II, Section 203(o) of the United States-Panama Trade Promotion Agreement Implementation Act (the "Act") [Pub. L. 112-43] implements the commercial availability provision provided for in Article 3.25 of the United States-Panama Trade Promotion Agreement (the "Agreement"). The Agreement entered into force on October 31, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Panama or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3.25 of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Panama or the United States. The items

listed in Annex 3.25 are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Panama or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.25, Paragraphs 4–6 of the Agreement. Under this provision, interested entities from Panama or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3.25 of the Agreement.

Pursuant to Chapter 3, Article 3.25, paragraph 6 of the Agreement, which requires that the President publish procedures for parties to exercise the right to make these requests, Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Panama as set out in Annex 3.25 of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (“CITA”), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (“OTEXA”) (See Proclamation No. 8894, 77 FR 66507, November 5, 2012).

The intent of the U.S.-Panama TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical

specifications and the production capabilities of Panamanian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Panama, subject to Section 203(o) of the Act.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA’s website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

III. Data

OMB Control Number: 0625–0273.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.

Estimated Total Annual Burden Hours: 89.

Estimated Total Annual Cost to Public: \$5,340.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–05749 Filed 3–25–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review to determine if United Renewable Energy Co., Ltd. (URE) is the successor-in-interest to Neo Solar Power Corporation (NSP), Gintech Energy Corporation (Gintech), and Solartech Energy Corporation (Solartech) in the context of the antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from Taiwan.

DATES: Applicable March 26, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2923.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published in the **Federal Register** an antidumping duty order on solar products from Taiwan.¹ On February 1, 2019, URE requested that, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b), Commerce conduct an expedited changed circumstances review of the *Order* to determine that URE is the successor-in-interest to NSP, Gintech and Solartech, and accordingly, to assign URE the cash deposit rate assigned to the three predecessor companies in the second administrative review.²

Scope of the Order

The merchandise covered by this *Order* is crystalline silicon photovoltaic cells, and modules, laminates and/or

¹ See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015) (*Order*).

² See Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Changed Circumstances Review and Successor-in-Interest Determination,” dated February 1, 2019 (CCR Request) at 2; see also *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review*; 2016–2017, 83 FR 30401 (June 28, 2018) (AR2 Final Results).

panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For a complete description of the scope of the *Order*, see the appendix to this notice.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In its request for a changed circumstances review, URE provided information indicating that URE was formed through a merger between NSP, Gintech and Solartech.³ This corporate restructuring constitutes changed circumstances warranting a review of the *Order*.⁴ Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review based upon the information contained in URE's submission.

In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.⁵ While no single factor or combination of factors will necessarily be dispositive in the successor-in-interest determination, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.⁶ Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.⁷

URE has provided sufficient evidence to warrant a review to determine whether URE is the successor-in-interest to NSP, Gintech and Solartech for the purposes of the *Order*. Commerce intends to publish in the **Federal Register** a notice of preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth Commerce's preliminary factual and legal conclusions. Commerce will issue its final results of the review in accordance with the time limits set forth in 19 CFR 351.216(e).

We are issuing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(b)(l).

Dated: March 18, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Modules, laminates, and panels produced in a third-country from cells produced in Taiwan are covered by this order. However, modules, laminates, and panels produced in Taiwan from cells produced in a third-country are not covered by this order.

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000 mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this

exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Further, also excluded from the scope of this order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (China).⁸ Also excluded from the scope of this order are modules, laminates, and panels produced in China from crystalline silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from China.

Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

[FR Doc. 2019-05426 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States—Peru Trade Promotion Agreement (US—PERU TPA)

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 28, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW,

⁸ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

³ See CCR Request.

⁴ See 19 CFR 351.216(d).

⁵ See, e.g., *Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

⁶ See, e.g., *Shrimp from India Preliminary Results*, 81 FR at 75377, unchanged in *Shrimp from India Final Results*, 81 FR at 90774.

⁷ See, e.g., *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of*

Antidumping Duty Changed Circumstances Review, 70 FR 17063, 17064 (April 4, 2005); *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Washington, DC 20230 (or via the internet at PRAcomments@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202-482-2043, Email: Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the "Agreement"), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Peru or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3-B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The items listed are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5-7 of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3-B.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President publish procedures for parties to exercise the right to make these requests. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements ("CITA"), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel ("OTEXA") (See Proclamation No. 8341, 74 FR 4105, January 22, 2009). Interim procedures to implement these responsibilities were published in the **Federal Register** on August 14, 2009. (See Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United

States—Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information, 74 FR 41111, August 11, 2009).

The intent of the U.S.-Peru TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to Section 203(o) of the Agreement.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

III. Data

OMB Control Number: 0625-0265.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations.

Estimated Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

Estimated Time per Response: 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.

Estimated Total Annual Burden Hours: 89.

Estimated Total Annual Cost to Public: \$5,340.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019-05752 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG892

Endangered and Threatened Species; Announcement of a Recovery Planning Workshop and Request for Information To Inform Recovery Planning for the Oceanic Whitetip Shark

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

ACTION: Notice; request for information.

SUMMARY: We, NMFS, are convening a workshop to solicit facts and information from experts to inform recovery planning for the oceanic whitetip shark (*Carcharhinus longimanus*). We will *not* be asking for a consensus recommendation on how to recover the oceanic whitetip shark. This workshop will be open to the public. We also request information that might inform the development of the recovery plan.

DATES: *Workshop dates and information:* The two-day recovery planning workshop for the oceanic whitetip shark will be held Tuesday, April 23 through Wednesday April 24, 2019 at the Ohana Waikiki East Hotel,

150 Kaiulani Ave., Honolulu, HI 96815. The workshop will begin each day at 9 a.m. and end each day at 5:00 p.m. or as necessary to complete business for the day.

RSVP date: If you plan to attend the workshop as an interested member of the public, please contact Chelsey Young, NMFS, Office of Protected Resources, chelsey.young@noaa.gov, 301-427-8491 no later than April 16, 2019.

Date for information submission: Please submit information to inform recovery planning via the methods listed below in the **ADDRESSES** section May 28, 2019.

ADDRESSES: You may submit information to help inform the recovery plan for the oceanic whitetip shark, by including NOAA-NMFS-2019-0024, by either of the following methods:

- **Federal e-Rulemaking Portal:** Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0024. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Chelsey Young, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13632, Silver Spring, MD 20910.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Chelsey Young, NMFS, Office of Protected Resources, (301) 427-8491, chelsey.young@noaa.gov; or John Carlson, NMFS, Southeast Fisheries Science Center, (850) 624-9031, john.carlson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2018, we published a final rule listing the oceanic whitetip shark as threatened under the Endangered Species Act (ESA) (83 FR 4153). The final listing rule describes the background of the listing action for the species and provides a summary of our conclusions regarding its status. For

additional background and a summary of natural history and threats to the species, the reader is referred to the status review report and final listing rule (available at <https://www.fisheries.noaa.gov/species/oceanic-whitewhisker>).

NMFS is required by section 4(f) of the ESA to develop and implement recovery plans for the conservation and survival of federally listed species unless the Secretary finds that such a plan will not promote the conservation of the species. Recovery means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary. The ESA specifies that recovery plans are to include (1) a description of site-specific management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of the time and costs required to carry out the actions and achieve the plan's conservation goals. Under section 4(f) of the ESA, public notice and an opportunity for public review and comment are also provided during recovery plan development. This notice and request for information serves as the first public notice and opportunity for public input early in the process. Once a recovery plan has been drafted, it will be announced in the **Federal Register** and available on our website (see **ADDRESSES** section) for public review and comment before being finalized.

Recovery Planning Workshop Announcement

From April 23 through 24, 2019, NMFS will hold a workshop at the Ohana Waikiki East Hotel in Honolulu, HI to help inform our recovery planning for the oceanic whitetip shark (see **DATES** section). We are inviting experts in specific topic areas, including the species' biology/ecology, threats to the species and the species' habitat, and the recovery planning process itself. These experts will help us to identify potential actions to address the threats to the species, identify gaps in knowledge and associated research needs, as well as begin developing recovery criteria for the species. In particular, this workshop will focus on addressing threats related to commercial fisheries interactions. Identified experts include representatives of Federal and state agencies, scientific experts, individuals from conservation partners and nongovernmental organizations, and commercial and recreational fishermen. Information received at the workshop

may be used to inform the development of other conservation decisions and actions, including the designation of critical habitat.

NMFS will provide a moderator to manage the workshop as well as a note taker to document input received. We are seeking facts and information; we will *not* be asking for consensus recommendations on how to recover the oceanic whitetip shark. During the workshop, there will also be a time-limited question and answer period during which attendees may ask NMFS about information presented. NMFS will prepare a summary of the workshop, noting the main points raised by the panelists and registered speakers.

This workshop will be open to the public, and a public comment period will be provided at the end of each day. If you plan to attend the workshop as an interested member of the public, please contact Chelsey Young at the address listed above by April 16, 2019, so we can ensure sufficient space for all participants and interested parties during our logistics planning.

Agenda

- April 23 will focus on the status and threats to the species and recovery actions related to commercial fisheries interactions;
- April 24 will focus on recovery criteria and actions related to commercial fisheries interactions, research to fill in data gaps, and other needs.

Request for Information

We also invite the public to submit scientific or commercial information that may help to inform the recovery criteria and actions for the oceanic whitetip shark. We are soliciting relevant information related to the species and its habitat, including the following:

1. Criteria for removing the oceanic whitetip shark from the list of threatened and endangered species (this could be either threats-based or abundance/trends based);
2. Human activities that contribute to threats to the species;
3. Physical, biological or chemical features of the environment that limit the recovery of the oceanic whitetip shark;
4. Recovery strategies addressing threats to physical and biological features that are essential to species conservation;
5. Strategies and/or actions to recover the oceanic whitetip shark;
6. Estimates of the time and cost, and potential partners to implement recovery actions;

7. Critical knowledge gaps and/or uncertainties that need to be resolved to better inform recovery efforts; and

8. Research, monitoring, and evaluation needs to address knowledge gaps and uncertainties, or to assess the species' status, limiting factors, and threats relative to recovery goals.

Information may be submitted via the methods listed above in the **ADDRESSES** section.

The workshop is accessible to persons with disabilities. Send requests for sign language interpretation or other auxiliary aids at least five business days in advance to Chelsey Young at (301) 427-8491.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 20, 2019.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2019-05685 Filed 3-25-19; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on Thursday, April 11, 2019, from 8:30 a.m. to 12 p.m. Central Time, the Agricultural Advisory Committee (AAC) will hold a public meeting at the Marriott Kansas City Overland Park, 10800 Metcalf Avenue, Overland Park, Kansas 66210. At this meeting, the AAC will discuss items related to futures commission merchants (FCMs), innovations in agricultural cash markets and futures market operations, as well as identify work streams and/or subcommittee groups that can help generate actionable recommendations to the Commission on select issues.

DATES: The meeting will be held on Thursday, April 11, 2019, from 8:30 a.m. to 12 p.m. Central Time. Members of the public who wish to submit written statements in connection with the meeting should submit them by April 18, 2018.

ADDRESSES: The meeting will take place at the Marriott Kansas City Overland Park, 10800 Metcalf Avenue, Overland Park, Kansas 66210. You may submit public comments, identified by "Agricultural Advisory Committee," by any of the following methods:

- **CFTC website:** <http://comments.cftc.gov>. Follow the

instructions for submitting comments through the Comments Online process on the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Charlie Thornton, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418-5500.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. The meeting agenda may change to accommodate other AAC priorities. For agenda updates and instructions to access the meeting via phone and the internet (forthcoming), please visit the AAC committee site at: http://www.cftc.gov/About/CFTCCcommittees/AgriculturalAdvisory/aac_meetings. After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, <http://www.cftc.gov>. All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting such as sign language interpretation or other ancillary aids because of a disability are asked to notify the contact person above at least (10) days in advance of the meeting.

(Authority: 5 U.S.C. app. 2 § 10(a)(2)).

Dated: March 21, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019-05756 Filed 3-25-19; 8:45 am]

BILLING CODE 6351-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2019-0014]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995

(PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew and reinstate the Office of Management and Budget (OMB) approval for an existing information collection titled, "Generic Information Collection Plan for the Collection of Qualitative Feedback on the Service Delivery of the Bureau of Consumer Financial Protection."

DATES: Written comments are encouraged and must be received on or before April 25, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** OIRA_submission@omb.eop.gov.

- **Fax:** (202) 395-5806.

- **Mail:** Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.reginfo.gov (this link becomes active on the day following publication of this notice). Select "Information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to Darrin King at (202) 435-9575, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Collection of Qualitative Feedback on the Service Delivery of the Bureau of Consumer Financial Protection.

OMB Control Number: 3170-0024.

Type of Review: Reinstatement without change of a previously approved collection of information.

Affected Public: Individuals; Private sector; and State, Local, or Tribal governments.

Estimated Number of Annual Respondents: 27,000.

Estimated Total Annual Burden Hours: 3,000.

Abstract: This generic information collection plan provides for the collection of qualitative feedback from consumers, financial institutions, and stakeholders on a wide range of services the Bureau provides in an efficient, timely manner, in accordance with the Bureau's commitment to improving service delivery. By qualitative feedback, the Bureau means information that provides useful insights on, for example, comprehension, usability, perceptions, and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The Bureau expects this feedback to include insights into consumer, financial institution, or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Bureau and consumers, financial institutions, and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The Bureau is proposing new collections of information pursuant to this request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on October 1, 2018, 83 FR 49368, Docket Number: CFPB-2018-0032. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this

request. All comments will become a matter of public record.

Dated: March 20, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019-05694 Filed 3-25-19; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Department of the Air Force

2019 Virtual Public Interface Control Working Group for the NAVSTAR GPS Public Documents

AGENCY: Global Positioning System Directorate (GPSD), Department of the Air Force, Department of Defense.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems (GPS) Directorate will host a "Virtual" 2019 Public Interface Control Working Group on May 7, 2019 for the following NAVSTAR GPS public documents: IS-GPS-200 (Navigation User Interfaces), IS-GPS-705 (User Segment L5 Interfaces), and IS-GPS-800 (User Segment L1C Interface). Additional logistical details can be found below.

DATES: 0830-1030 PST, 7 May, 2019.

FOR FURTHER INFORMATION CONTACT: Captain Michael Telcide (310-653-3163) or Mr. Daniel Godwin (310-653-3163); SMCGPER@us.af.mil.

SUPPLEMENTARY INFORMATION:

Call-in Information: Dial In: 310-653-2663, Meeting ID: 6729512, Password: 123456.

The purpose of this meeting is to update the public on GPS public document revisions and collect issues/comments for analysis and possible integration into future GPS public document revisions. Since the last Public Interface Control Working Group held on 12 September 2018, solutions to some of the topics have changed.

Specifically, GPS public documents will be updated to reflect how users will calculate the correct UT1 time following a leap second transition. All outstanding comments on GPS public documents will be considered in the next revision cycle (~Fall 2019). The "Virtual" 2019 Public Interface Control Working Group is open to the general public. The subject meeting will be dial-in only. For those who would like to attend and participate, we request that you register no later than May 3, 2019. Please send the registration information to SMCGPER@us.af.mil, providing your name, organization, telephone number,

email address, and country of citizenship.

Comments will be collected, catalogued, and discussed as potential inclusions to the version following the current release. If accepted, these changes will be processed through the formal directorate change process for IS-GPS-200, IS-GPS-705, and IS-GPS-800. All comments must be submitted in a Comments Resolution Matrix. This form along with proposed document revisions of the documents and the official meeting notice are posted at: <http://www.gps.gov/technical/icwg/meetings/2019/05>.

Please submit comments to the SMC/GPS Requirements (SMC/GPER) mailbox at SMCGPER@us.af.mil by May 3, 2019. Subject review materials will be posted NLT March 20, 2019. For more information, please contact Captain Michael Telcide at 310-653-3163 or Mr. Daniel Godwin at 310-653-3640.

Carlinda N. Lotson,

TSgt, USAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019-05470 Filed 3-25-19; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Basing of the Permanent F-22 Formal Training Unit

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for the proposed action to permanently beddown its F-22 Formal Training Unit (FTU). With this notice, the Air Force is initiating its scoping process and inviting the participation of the affected public, federal, state, and local agencies, any affected Native American tribe, and other interested persons to identify potentially significant environmental issues and to solicit related comments to assist in developing the overall scope of the F-22 FTU EIS.

DATES: The Air Force invites the affected public, federal, state, and local agencies, any affected Native American tribe, and other interested persons to attend formal scoping meetings in locations to be announced in the areas of Langley AFB, Eglin AFB, and Tyndall AFB. The dates, times and locations for the scoping meetings will be announced

in local newspapers of general circulation by not later than 15 May 2019 and no less than 15 days prior to the meetings.

ADDRESSES: The affected public, federal, state, and local agencies, any affected Native American tribe, and other interested persons should submit their scoping comments in writing to: Mr Mike Ackerman, (757) 276-8556, AFCEC/CZN; Attn: F-22 FTU EIS, 2261 Hughes Ave., Ste. 155, JBSA Lackland, TX 78236-9853 or via email 633CES.CEIE.NEPAPublicComment@us.af.mil.

For FedEx and UPS Deliveries mail to: F-22 FTU EIS Scoping, 3515 S General McMullen, San Antonio, TX 78226-9853.

SUPPLEMENTARY INFORMATION: The EIS will assess the potential environmental consequences of the proposed action to beddown the F-22 FTU at Langley Air Force Base (AFB), Virginia, and the No Action Alternative, which consists of continuing F-22 FTU operations from a combination of Eglin AFB, Florida and Tyndall AFB, Florida. The Air Force carefully considered other alternatives for this proposed action, but based upon early internal scoping, these alternatives are not currently considered reasonable or within the scope of the proposed EIS due to known operational restrictions. Scoping comments submitted by affected public, federal, state, and local agencies, any affected Native American tribe, and other interested persons should be substantive in nature, in order to assist the Air Force in early identification of significant issues, and to ensure those issues are properly analyzed.

There is only one F-22 FTU and it consists of the F-22 aircraft in the 43rd Fighter Squadron (43 FS) and its associated T-38 aircraft in the 2d Fighter Training Squadron (2 FTS). The F-22 is the United States' premier fighter aircraft and essential to national security. It is a specialized "Fifth-Generation" fighter which introduces a large array of sensors that can detect both air and ground targets and share that data with other U.S. and Allied aircraft.

In December 2018, the Air Force sought approval from the Council of Environmental Quality (CEQ) of alternative arrangements pursuant to 40 CFR 1506.11 for implementing the procedural provisions of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* (NEPA), for the interim beddown of the Air Force's F-22 FTU. The Air Force sought alternative arrangements due to emergency conditions resulting from Hurricane

Michael displacing the 43 FS and 2 FTS from their home at Tyndall Air Force Base (AFB), Florida. On 21 December, 2018, the Air Force announced its decision to accept alternative arrangements proposed and approved by the Council on Environmental Quality (CEQ) for the Air Force's interim beddown of the F-22 Formal Training Unit at Eglin Air Force Base, Florida. The Air Force published a memorandum documenting the Air Force's decision to accept the CEQ's alternative arrangements in the **Federal Register** (84 FR 103, January 11, 2019). The alternative arrangements allowed the Air Force to comply with NEPA and temporarily restore training of replacement pilots for the F-22 FTU at Eglin AFB, by January 31, 2019.

As part of the alternative arrangements, the Air Force agreed to issue a Notice of Intent to prepare an EIS for the follow-on permanent F-22 FTU beddown, as soon as possible, but no later than April 1, 2019. This notification complies with that requirement.

Carlinda N. Lotson,

TSgt, USAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019-05456 Filed 3-25-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2016-0035; OMB Control Number 0704-0557]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Government Property; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 25, 2019.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 245, Use of the Government Property Clause for Repair of Government-

furnished Property; OMB Control Number 0704-0557.

Affected Public: Businesses and other for-profit entities and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: New submission.

Reporting Frequency: On occasion.

Number of Respondents: 766.

Responses per Respondent: 5.6.

Annual Responses: 4,290.

Average Burden per Response: .5 hours.

Annual Response Burden Hours: 2,145 (includes 1,762 response hours plus 383 recordkeeping hours).

Needs and Uses: The information collected is a result of a new DFARS requirement to use FAR clause 52.245-1, Government Property, in purchase orders for repair, maintenance, overhaul, or modification of Government property, regardless of the unit acquisition cost of the items to be repaired. Updated information for fiscal year 2018 awards of purchase orders for repairs was obtained from the Federal Procurement Data System to update the number of respondents, responses, and annual burden hours for the information collection and this notice.

The property records, receiving reports, and receipt provided in the Wide Area WorkFlow system are used by DoD for Government property accountability. The DFARS requirement for electronic notification of receipt provides assurance to the Government that repair assets have arrived at the contractor's repair facility. Moreover, in the case of repair items provided under purchase orders, contractors need only report the receipt of the repair item; no other reporting is required. Submission of the information for purchase orders for repairs facilitates compliance with DoD Instruction 4161.02 entitled "Accountability and Management of Government Contract Property," which requires DoD components to use electronic transactions when transferring Government property to a contractor and upon return of property to DoD.

OMB Desk Officer: Ms. Jasmeet Sehra. Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Sehra, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

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

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350-3100.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019-05750 Filed 3-25-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS-2019-0011]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: *Applicable Date:* March 28, 2019.

FOR FURTHER INFORMATION CONTACT: Greg Snyder, telephone 703-614-0719.

SUPPLEMENTARY INFORMATION: On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181. Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602-70.

The Principal Director, Defense Pricing and Contracting (DPC), issued a memorandum dated February 26, 2019, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent

based on fiscal year 2018 data from the Federal Procurement Data System. The product categories to be competed effective March 28, 2019, are the following:

- 7125 (Cabinets, Lockers, Bins, and Shelving)
- 7210 (Household Furnishings)
- 7540 (Standard Forms)
- 7810 (Athletic and Sporting Equipment)
- 8420 (Underwear and Nightwear, Mend's)
- 8470 (Armor, Personal)

The DPC memorandum with the current list of product categories for which FPI has a significant market share is posted at: https://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items. A timely offer from FPI must be considered and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019-05754 Filed 3-25-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF ENERGY

[FE Docket No. 19-34-LNG]

Annova LNG Common Infrastructure, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on February 26,

2019, and supplemented on March 13, 2019, by Annova LNG Common Infrastructure, LLC (Annova). The Application requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to approximately 360 billion cubic feet per year (Bcf/yr) of natural gas (0.986 Bcf per day). Annova seeks to export the LNG by vessel from its proposed natural gas liquefaction and export facilities to be located on the Brownsville Ship Channel in Cameron County, Texas (the Project), to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, May 28, 2019.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Larine Moore, U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-7970; (202) 586-9478.

Cassandra Bernstein, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9793.

SUPPLEMENTARY INFORMATION: Annova requests this authorization, on its own behalf and as agent for other entities that hold title to the LNG at the point of export, for a 20-year term commencing on the earlier of the date of first commercial export or seven years from the date of the requested authorization. Annova filed the

Application under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a). Additional details can be found in Annova's Application and supplement to the Application, posted on the DOE/FE website at: <https://www.energy.gov/fe/annova-lng-common-infrastructure-llc-annova-19-34-lng-long-term-nftans>.

Protests, motions to intervene, notices of intervention, and written comments are invited.

DOE/FE Evaluation

In reviewing Annova's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),¹ and DOE/FE's response to public comments received on that Study.²

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 FR 48132 (Aug. 15, 2014);³ and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*, 79 FR 32260 (June 4, 2014).⁴

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No

final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to fergas@hq.doe.gov, with FE Docket No. 19-34-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19-34-LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.*, exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be

provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>.

Signed in Washington, DC, on March 20, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

[FR Doc. 2019-05732 Filed 3-25-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

State Energy Advisory Board

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: April 25, 2019, 9:30 a.m. to 5:30 p.m. ET. April 26, 2019, 9:00 a.m. to 3:30 p.m. ET.

ADDRESSES: The meeting will be held at the U.S. Department of Energy, 1000 Independence Ave. SW, and the Hyatt House, 725 Wharf St. SW, Washington, DC, 20024.

FOR FURTHER INFORMATION CONTACT: Michael Li, Senior Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Phone number 202-287-5189, and email Michael.Li@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives,

¹ NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), available at: <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>; see also U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports; Notice of Availability of the 2018 LNG Export Study and Request for Comments, 83 FR 27314 (June 12, 2018).

² U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

³ The Addendum and related documents are available at: <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

⁴ The Life Cycle Greenhouse Gas Report is available at: <http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states>.

programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Meet with and hear from Department of Energy staff of the Office of Energy Efficiency and Renewable Energy. The meeting is also expected to hear from the Office of Technology Transitions and the Office of Electricity. The Board is expected to develop recommendations for the Assistant Secretary of the Office of Energy Efficiency and Renewable Energy.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB website, <http://www.energy.gov/eere/steab/state-energy-advisory-board>.

Signed in Washington, DC, on March 20, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019-05684 Filed 3-25-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19-419-002.

Applicants: Tuscarora Gas Transmission Company.

Description: Pre-Arranged/Pre-Agreed (Petition for Approval of Settlement) Filing, et al. of Tuscarora Gas Transmission Company under RP19-419.

Filed Date: 3/15/19.

Accession Number: 20190315-5273.

Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19-784-001.

Applicants: Arlington Storage Company, LLC.

Description: Tariff Amendment: Arlington Storage Company, LLC.—Filing of Replacement eTariff Section to be effective 4/1/2019.

Filed Date: 3/18/19.

Accession Number: 20190318-5081.

Comments Due: 5 p.m. ET 4/1/19.

Docket Numbers: RP19-843-000.

Applicants: Southern LNG Company, L.L.C.

Description: Compliance filing Ship Loading Service Compliance Filing to be effective 12/31/9998.

Filed Date: 3/18/19.

Accession Number: 20190318-5073.

Comments Due: 5 p.m. ET 4/1/19.

Docket Numbers: RP19-844-000.

Applicants: Texas Gas Transmission, LLC.

Description: Request for Waiver of Tariff Provision of Texas Gas Transmission, LLC. under RP19-844.

Filed Date: 3/19/19.

Accession Number: 20190319-5054.

Comments Due: 5 p.m. ET 3/25/19.

Docket Numbers: RP19-845-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing 2019 Annual Penalty Revenue Crediting Report.

Filed Date: 3/19/19.

Accession Number: 20190319-5123.

Comments Due: 5 p.m. ET 4/1/19.

Docket Numbers: RP19-846-000.

Applicants: Black Hills Shoshone Pipeline, LLC.

Description: Compliance filing NAESB Compliance Filing—Order No. 587—Y to be effective 4/1/2019.

Filed Date: 3/19/19.

Accession Number: 20190319-5133.

Comments Due: 5 p.m. ET 4/1/19.

Docket Numbers: RP19-847-000.

Applicants: PGPipeline LLC.

Description: Compliance filing PGPipeline LLC. NAESB Compliance Filing to be effective 8/1/2019.

Filed Date: 3/19/19.

Accession Number: 20190319-5134.

Comments Due: 5 p.m. ET 4/1/19.

Docket Numbers: RP19-848-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non Conforming Negotiated Rate Agreements Update (WPX Mar 19) to be effective 3/19/2019.

Filed Date: 3/19/19.

Accession Number: 20190319-5147.

Comments Due: 5 p.m. ET 4/1/19.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-05714 Filed 3-25-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19-81-000.

Applicants: High Lonesome Mesa Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of High Lonesome Mesa Wind, LLC.

Filed Date: 3/19/19.

Accession Number: 20190319-5174.

Comments Due: 5 p.m. ET 4/9/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16-38-005.

Applicants: Kingbird Solar A, LLC.

Description: Compliance filing: Kingbird Solar A Supplemental Notice of Tariff Update to be effective 3/19/2019.

Filed Date: 3/19/19.

Accession Number: 20190319-5164.

Comments Due: 5 p.m. ET 4/9/19.

Docket Numbers: ER19-688-001.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: SCE's Response to Deficiency re Amended Agreement Harbor Cogeneration Company to be effective 12/21/2018.

Filed Date: 3/20/19.

Accession Number: 20190320-5056.

Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1047-002.
Applicants: VESIVEC LLC.
Description: Tariff Amendment: Second Supplement to MBRA Tariff to be effective 3/21/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5109.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1383-000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA/SA No. 4505; Queue No. Z2-097 to be effective 5/2/2019.
Filed Date: 3/19/19.
Accession Number: 20190319-5157.
Comments Due: 5 p.m. ET 4/9/19.
Docket Numbers: ER19-1384-000.
Applicants: MidAmerican Central California Transco, LLC.
Description: Application for Authorization under Section 205 of the Federal Power Act of MidAmerican Central California Transco, LLC.
Filed Date: 3/19/19.
Accession Number: 20190319-5166.
Comments Due: 5 p.m. ET 4/9/19.
Docket Numbers: ER19-1385-000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Woodward Mountain Wind I Interconnection Agreement Second Amd & Restated to be effective 3/5/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5036.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1386-000.
Applicants: Orange and Rockland Utilities, Inc.
Description: § 205(d) Rate Filing: Attachment J—Municipal Underground Surcharge Revision to be effective 4/1/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5074.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1387-000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: Ministerial Filing to Conform Tariff Sections to be effective 4/1/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5106.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1388-000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019-03-20 SA 3276 EDF Renewables—MDU GIA (G359R) to be effective 3/6/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5112.
Comments Due: 5 p.m. ET 4/10/19.

Docket Numbers: ER19-1389-000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits 19 Engineering and Construction Service Agreement to be effective 5/24/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5114.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1390-000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019-03-20 SA 3277 EDF Renewables—OTP FCA (G359R) to be effective 3/6/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5127.
Comments Due: 5 p.m. ET 4/10/19.
Docket Numbers: ER19-1391-000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: § 205(d) Rate Filing: Revision to FERC Rate Schedule 202 to be effective 3/11/2019.
Filed Date: 3/20/19.
Accession Number: 20190320-5129.
Comments Due: 5 p.m. ET 4/10/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-05712 Filed 3-25-19; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2011-0275; FRL-9990-21-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Hydrochloric Acid Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Hydrochloric Acid Production (EPA ICR Number 2032.10, OMB Control Number 2060-0529), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2011-0275, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for Hydrochloric Acid Production (40 CFR part 63, subpart NNNNN) were proposed on September 18, 2001, promulgated on April 17, 2003, and amended on April 7, 2006. These regulations apply to existing and new hydrochloric acid (HCl) production facilities. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart NNNNN. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Hydrochloric acid production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart NNNNN).

Estimated number of respondents: 19 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 22,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$2,742,000 (per year), which includes \$16,000 for annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in burden and costs from the most recently-approved ICR. The adjustment decrease in burden is

due to more accurate estimates of existing and anticipated new sources, which are based on EPA's recent re-evaluation of the source category inventory as part of a proposed rulemaking and risk and technology review for 40 CFR 63, Subpart NNNNN. We have also corrected the previous assumption that existing respondents would record startup, shutdown, and malfunction events 100 times per year. Based on information received from industry in the development of the proposed risk and technology review, this assumption has been corrected to 10 times per year. Further, as a result of the decrease in existing and new sources, there is also an adjustment decrease in the number of total annual responses and the capital and operating and maintenance costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05745 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2011-0264; FRL-9990-03-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Stationary Compression Ignition Internal Combustion Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Stationary Compression Ignition Internal Combustion Engines (EPA ICR No. 2196.06, OMB Control No. 2060-0590), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2011-0264 to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at

www.regulations.gov or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The New Source Performance Standards (NSPS) for Stationary Compression Ignition Internal Combustion Engines (40 CFR part 60, subpart IIII) apply to manufacturers, owners and operators of new stationary compression ignition (CI) internal combustion engines (ICE). New facilities include those that commenced construction, modification or reconstruction after the date of proposal. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any

startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS. This information is being collected to assure compliance with 40 CFR part 60, subpart IIII.

Form Numbers: None.

Respondents/affected entities: Manufacturers, owners and operators of new stationary compression ignition (CI) internal combustion engines (ICE).

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart IIII).

Estimated number of respondents: 206,885 (total).

Frequency of response: Initially and annually.

Total estimated burden: 408,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$46,700,000 (per year), includes \$167,000 for annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no significant increase in the burden hours in this ICR compared to the previous ICR. This because the regulations have not changed significantly over the past three years and are not anticipated to change over the next three years. The increase in labor costs from the most-recently approved ICR is due to adjustment in labor rates. We also updated the number of respondents to reflect new respondents since the approval of the prior ICR. There was no change in the capital or O&M costs. There is a small increase in the number of responses based on the adjustments to the number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05744 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2018-0266; FRL-9987-28-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the

following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides and identified by EPA ICR No. 0161.14 and OMB Control No. 2070-0027. This is a request to renew the approval of an existing ICR. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on July 25, 2018. With this submission, EPA is providing an additional 30 days for public review and comment.

DATES: Comments must be received on or before April 25, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2018-0266 and OMB Control No. 2070-0027, to: (1) EPA online using <http://www.regulations.gov> (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the 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. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Field External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 543-9488; email address: siu.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at <http://www.regulations.gov> or in person at the EPA Docket Center, West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

ICR status: This ICR is currently scheduled to expire on March 31, 2019. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Abstract: This ICR addresses the information collection activities associated with the statutory mandate requiring EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement; which is known as the Foreign Purchaser Acknowledgement Statement, or FPAS, must be transmitted to the Designated National Authority or appropriate official of the government in the importing country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies, along with an explanatory letter to appropriate government officials of the countries that are importing the pesticide. In addition to the export notification for unregistered pesticides, FIFRA requires that all exported pesticides include appropriate labeling. There are different requirements for registered and unregistered products. Export labeling requirements meet the definition of third-party notification. In the interests of consolidating various related information collection requests, this ICR includes the burden estimates for the FPAS requirement for unregistered pesticides, as well as the labeling requirement for all exported pesticides, both registered and unregistered.

Respondents/Affected Entities: Individuals or entities that either manufacture and export pesticides or that reformulate or repackage and export

pesticides. The North American Industrial Classification System (NAICS) code assigned to the parties responding to this information is 3250A1.

Respondent's obligation to respond: Mandatory.

Estimated total number of potential respondents: 2,240 annually.

Frequency of response: On occasion.

Estimated total burden: 16,660 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: \$1,087,102. This is the estimated burden cost, which includes no capital investment or maintenance and operational costs.

Changes in the estimates: There is a decrease of 1,333 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects a reduction in the annual number of foreign purchaser acknowledgment statements received by EPA (from 3,024 to 2,774), which resulted in a corresponding decrease in the estimated annual burden hours for respondents (from 3,205 to 2,940 hours); and a reduction in the estimated annual burden associated with labeling requirements. The respondent burden associated with labeling requirements for unregistered exported pesticides decreased from 4,888 to 4,480 hours; and from 9,900 to 9,240 hours associated with labeling requirements for registered exported pesticides. The decrease in burden associated with labeling requirements is due to a reduction in the number of respondents per calendar years 2015–2017. Total labor costs for respondents decreased due to a decrease in the estimated number of respondents per calendar year from 2015–2017 and an update to the wage rate estimates, which incorporated higher estimates for benefits than was used in the previous renewal. These changes qualify as adjustments.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–05709 Filed 3–25–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2018–0250; FRL–9991–01–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces (EPA ICR No. 2442.03, OMB Control No. 2060–0693), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2018–0250, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room

3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The New Source Performance Standards (NSPS) for New Residential Hydronic Heaters and Forced-Air Furnaces (40 CFR part 60, subpart QQQQ) to new residential hydronic heaters, forced-air furnaces, or other central heaters manufactured either on or after May 15, 2015 and sold or distributed in the United States. The residential hydronic heater and forced-air furnace NSPS establishes a certification program, instead of the usual NSPS requirement that each affected facility demonstrate compliance with emission limits through performance testing. Under this certification program, a single heating appliance is tested to demonstrate compliance with particulate matter (PM) emission limits for an entire model line which could consist of thousands of stoves. The use of a certification approach significantly reduces the compliance burden, including information collection, for the manufacturers of hydronic heaters and forced-air furnaces. Each manufacturer subject to Subpart QQQQ is required to keep records of all documentation pertaining to the certification testing for each model line, the results of the quality assurance program inspections, and a sealed sample of each heater or furnace upon which certification tests were performed and certification granted. Each approved test laboratory and third-party certifier must maintain records consisting of all documentation pertaining to each certification test, quality assurance program inspection and audit test. Manufacturers must also submit the test reports and other documentation to EPA when they apply for a certificate of compliance for each model line. These reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS. This information is being collected to assure compliance with 40 CFR part 60, subpart QQQQ.

Form Numbers: None.

Respondents/affected entities: New residential hydronic heaters, forced-air furnaces, or other central heaters manufactured either on or after May 15, 2015 and sold or distributed in the United States. These regulations also apply to EPA-approved testing laboratories and EPA-approved third-party certifiers.

Respondent's obligation to respond: Mandatory (40 CFR 60 Subpart QQQQ).

Estimated number of respondents: 50 respondents, consisting of 32 hydronic heater manufacturers, 7 forced-air furnace manufacturers, and 11 companies that are EPA-approved testing laboratories, third-party certifiers or both.

Frequency of response: Annual.

Total estimated burden: 4,270 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$4,770,000 (per year), which includes \$4,280,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most recently-approved ICR is due to an increase in the number of respondents and an increase in the number of testing labs and third-party certifiers. The increase in burden is also due to an adjustment to the burden for reporting by third-party certifiers to include burden for submittal of certifications, QA audit program reports, and credentials. Additionally, there is an increase in the annual average capital/startup costs as compared with the costs in the previous ICR, due to a number of testing labs and third-party certifiers expected to re-apply for re-accreditation in the three-year period. The overall result is an increase in the number of responses and in the burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05741 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0104; FRL-9991-02-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Polyvinyl Chloride and Copolymer Production Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), “NESHAP for Polyvinyl Chloride and Copolymer Production Area Sources (EPA ICR No. 2454.03, OMB Control No. 2060-0684), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31,

2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0104, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyvinyl Chloride and Copolymers Production Area Sources (40 CFR part 63, subpart DDDDDD) apply to existing facilities and new PVC and copolymer production facilities that are an area source of hazardous air

pollutants (HAP). This ICR includes burden estimates for area sources only. Major sources are regulated under NESHAP Subpart HHHHHHH and their burdens are included in a separate ICR (OMB Control Number 2060-0666). New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. This information is being collected to assure compliance with 40 CFR part 63, subpart DDDDDD.

Form Numbers: None.

Respondents/affected entities: Polyvinyl chloride and copolymer production area source facilities.

Respondent's obligation to respond: Mandatory (40 CFR 63, Subpart DDDDDD).

Estimated number of respondents: 4 (total).

Frequency of response: Initially, semiannually and annually.

Total estimated burden: 92,300 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$11,900,000 (per year), which includes \$1,440,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in the burden labor hours and cost in this ICR compared to the previous ICR. This increase is not due to any program changes. The adjustment increase in burden is due to an increase in the number of respondents to reflect one additional existing facility. There is also an adjustment increase to the operation and maintenance costs due to the additional respondent, as well as an increase in the estimated cost for testing thermal oxidizers for process vents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05742 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OECA-2014-0103; FRL-9991-09-OEI]****Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Nitric Acid Plants for Which Construction, Reconstruction or Modification Commenced After October 14, 2011 (Renewal)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Nitric Acid Plants for which Construction, Reconstruction or Modification Commenced after October 14, 2011 (EPA ICR Number 2445.04, OMB Control Number 2060-0674), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0103, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The New Source Performance Standards (NSPS) for Nitric Acid Plants for which Construction, Reconstruction or Modification Commenced after October 14, 2011 (40 CFR part 60 Subpart Ga) were proposed on October 14, 2011, and promulgated on August 14, 2012. These regulations apply to new nitric acid production units (NAPUs) that produce weak nitric acid by either the pressure or atmospheric pressure process. Nitrogen oxide (NO_x) is the pollutant regulated under this subpart. The standards limit nitrogen oxides, expressed as nitrogen dioxide (NO₂), to 0.50 lb per ton of 100 percent nitric acid produced. This information is being collected to assure compliance with 40 CFR part 60, subpart Ga. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Nitric acid production units constructed, reconstructed or modified after October 14, 2011.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ga).

Estimated number of respondents: 10 (total, rounded).

Frequency of response: Initially and occasionally.

Total estimated burden: 1,740 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$481,000 (per year), which includes \$283,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most recently-approved ICR is due to an adjustment. The adjustment increase in burden is due to an increase in the number of new or modified sources. The change in burden for the new and existing facilities is due primarily to updated estimates of existing and anticipated new sources based on information from industry, which supports a constant growth rate. There is an increase in the number of total annual responses. This increase is due to the update in the number of respondents, as well as a correction to the prior burden estimates, which did not account for submittal of reports for malfunctions (40 CFR 60.77a(f)). Finally, there is a small adjustment increase in the capital/startup vs. operation and maintenance (O&M) costs as calculated in section 6(b)(iii) compared with the costs in the previous ICR. The increase in O&M costs reflected in this ICR is due to the increased universe of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05746 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OECA-2014-0089; FRL-9991-18-OEI]****Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Semiconductor Manufacturing (Renewal)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Semiconductor Manufacturing (EPA ICR Number 2042.07, OMB Control Number 2060-0519), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register**, on

May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0089 to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Semiconductor Manufacturing (40 CFR part 63, subpart BBBBB) were proposed on May 8, 2002, and promulgated on May 22, 2003. These regulations apply to existing facilities and new facilities that emit or has the potential to emit, considering controls, in the aggregate, any single

hazardous air pollutants (HAP) at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart BBBBB.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities:

Semiconductor manufacturing facilities.

Respondent's obligation to respond:

Mandatory (40 CFR part 63, subpart BBBBB).

Estimated number of respondents: 1 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 41 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$5,270 (per year), which includes \$550 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. There was no change in the capital/O&M cost.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-05747 Filed 3-25-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will

meet in open session at 10:00 a.m. on Friday, March 29, 2019, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Request for Delegated Authority to Approve and Publish New or Amended Privacy Act Systems of Record Notice.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio to Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities.

Memorandum and resolution re: Notice of Proposed Rulemaking: Amendments to 12 CFR part 370, Recordkeeping for Timely Deposit Insurance Determination.

Memorandum and resolution re: Notice of Proposed Rulemaking on Joint Deposit Accounts (Part 330).

The meeting will be held in the Board Room located on the Sixth Floor of the FDIC Building located at 550 17th Street NW, Washington, DC

This Board meeting will be Webcast live via the internet and subsequently made available on-demand approximately one week after the event. Visit <http://fdic.windrosemedia.com> to view the event. If you need any technical assistance, please visit our Video Help page at: <https://www.fdic.gov/video.html>.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703-562-2404 (Voice) or 703-649-4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202-898-7043.

Dated at Washington, DC, on March 22, 2019.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
 [FR Doc. 2019-05863 Filed 3-22-19; 4:15 pm]
 BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Security State Bancshares of Bemidji, Inc., Bemidji, Minnesota*; to engage *de novo* in extending credit and servicing activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 20, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019-05688 Filed 3-25-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0152; Docket No. 2018-0003; Sequence No. 24]

Submission for OMB Review; Service Contracting

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting.

DATES: Submit comments on or before April 25, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000-0152, Service Contracting.

Instructions: Please submit comments only and cite Information Collection 9000-0152, Service Contracting, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202-501-1448 or via email at curtis.glover@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The policies implemented at FAR 37.115, Uncompensated Overtime, are based on Section 834 of Public Law 101-510 (10 U.S.C. 2331). The policies require insertion of FAR provision 52.237-10, Identification of Uncompensated Overtime, in all solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the number of hours to be provided.

The provision requires that offerors identify uncompensated overtime hours, in excess of 40 hours per week, and the uncompensated overtime rate for direct charge Fair Labor Standards Act-exempt personnel. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees and discourages the use of uncompensated overtime.

B. Public Comment

A 60-day notice was published in the **Federal Register** at 83 FR 53875 on October 25, 2018. No comments were received.

C. Annual Reporting Burden

The burden placed on offerors is the time required to identify and support any hours in excess of 40 hours per week included in their proposal or subcontractor's proposal. It is estimated that there will be 25,801 service contracts awarded annually at \$250,000 or more, of which 65 percent, or 16,771, contracts will be competitively awarded. About seven proposals will be received for each contract award. Of the total 117,397 (16,771 × 7) proposals received, only 25 percent, or 29,349, proposals are expected to include uncompensated overtime hours. It is estimated that offerors will take about 30 minutes to identify and support any hours in excess of 40 hours per week included in their proposal or subcontractor's proposal.

Respondents: 29,349.

Responses per Respondent: 1.

Total Annual Responses: 29,349.

Hours per Response: .5.

Total Burden Hours: 14,675.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: Annually.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from

the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0152, Service Contracting, in all correspondence.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019-05728 Filed 3-25-19; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-7053-N]

Announcement of the Renewal of the Charter for the Advisory Panel on Outreach and Education (APOE) and the April 10, 2019 Meeting of APOE

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

ACTION: Notice.

SUMMARY: This notice announces the renewal of the Charter and the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance MarketplaceSM, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES:

Meeting Date: Wednesday, April 10, 2019 8:30 a.m. to 3:30 p.m. eastern daylight time (e.d.t.).

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Wednesday, March 27, 2019, 5:00 p.m., e.d.t.

ADDRESSES:

Meeting Location: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 425A, Conference Room, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for

Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 352G HHH, Washington, DC 20201, 202-690-5742, or via email at Lisa.Carr@cms.hhs.gov.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website <https://www.regonline.com/apoe2019apr10meeting> or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 352G HHH, Washington, DC 20201, 202-690-5742, or via email at Lisa.Carr@cms.hhs.gov.

Additional information about the APOE is available at: <http://www.cms.gov/Regulations-and-guidance/Guidance/FACA/APOE.html>. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92-463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education¹ (the predecessor to the APOE) on January 21, 1999 (64 FR 7899) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice

¹ We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

(M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105-33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108-173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111-148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (collectively referred to as the Affordable Care Act) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and CHIP. Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance MarketplaceSM, or MarketplaceSM 2). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the MarketplaceSM. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort

² Health Insurance MarketplaceSM and MarketplaceSM are service marks of the U.S. Department of Health & Human Services.

and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2019, and will terminate on January 19, 2021 unless renewed by appropriate action.

B. Charter Renewal

In accordance with the charter approved on January 16, 2019, the APOE was renewed. The APOE will advise the HHS and CMS on developing and implementing education programs that support individuals with or who are eligible for Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance MarketplaceSM about options for selecting health care coverage under these and other programs envisioned under health care reform to ensure improved access to quality care, including prevention services. The scope of this Federal Advisory Committee Act (FACA) group also includes advising on education of providers and stakeholders with respect to health care reform and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

The charter will terminate on January 19, 2021, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the CHIP, or coverage available through the Health Insurance MarketplaceSM and other CMS programs.

- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance MarketplaceSM consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.

- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and Health Insurance MarketplaceSM education programs, and other CMS programs as designated.

- Assembling and sharing an information base of “best practices” for helping consumers evaluate health coverage options.

- Building and leveraging existing community infrastructures for information, counseling, and assistance.

- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Centennial Scholar, Department of Health Policy and Management, John Hopkins Bloomberg School of Public Health; Robert Blancato, President, Matz, Blancato & Associates; Dale Blasier, Professor of Orthopaedic Surgery, Department of Orthopaedics, Arkansas Children's Hospital; Deborah Britt, Executive Director of Patient Services, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics and Public Health, The Ohio State University College of Medicine, The Research Institute at Nationwide Children's Hospital; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Louise Scherer Knight, Director, Harry J. Duffey Family Patient and Family Services Program, Johns Hopkins Sidney Kimmel Comprehensive Cancer Center; Roanne Osborne-Gaskin, M.D., Medical Director/Chief Medical Officer, MercyCare Health Plans; Cathy Phan, Business Development Coordinator, Asian American Health Coalition dba HOPE Clinic; Kamilah Pickett, Director, Community Health Compass; Alvia Siddiqi, Medical Director, Advocate Physician Partners; and Tobin Van

Ostern, Co-Founder, Young Invincibles Advisors.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the April 10, 2019 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (January 16, 2019) meeting
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available.

Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide

alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at <http://www.dhs.gov/real-id-enforcement-brief>.

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Authority: Sec. 1114(f) of the Social Security Act (42 U.S.C. 1314(f)), sec. 222 of the Public Health Service Act (42 U.S.C. 217a), and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR part 102-3).

Dated: March 15, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019-05764 Filed 3-22-19; 11:15 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970-0427]

Submission for OMB Review; Comment Request

Title: Head Start Program Information Report.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Program Information Report	3,404	1	1	3,404
Grantee Monthly Enrollment Reporting	2,160	12	0.05	1,296
Contacts, Center Locations	3,404	1	0.25	851

Estimated Total Annual Burden Hours: 5,551.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written

comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019-05737 Filed 3-25-19; 8:45 am]

BILLING CODE 4184-40-P

Description: The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew, with changes, authority to collect information using the Head Start Program Information Report (PIR), monthly enrollment, contacts, and center locations. Changes are primarily to align with the Head Start Program Performance Standards. The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs, to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act, and to assist the administration and training/technical assistance of Head Start programs. Other program data is used to track enrollment, contact the program, provide a locator for parents to find a nearby program, and for oversight.

Respondents: Head Start and Early Head Start grantees.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970-0374]

Submission for OMB Review; Comment Request

Title: Head Start Eligibility Verification

Description: The Office of Head Start (OHS) within the Administration for Children and Families, United States Department of Health and Human Services, proposes to renew, with changes, its authority for record keeping requirements associated with Head Start eligibility verification. Changes are minor and provide some additional

clarification. OHS developed the form to assist grantees in meeting Head Start record keeping requirements for eligibility determination records.

However, Head Start programs are not required to use this specific form. Programs may either adopt the form or

design a new form to meet the eligibility requirements.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Eligibility Verification Form	1,574	428	.025	16,842

Estimated Total Annual Burden Hours: 16,842.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office

of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV. Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2019-05743 Filed 3-25-19; 8:45 am]

BILLING CODE 4184-40-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970-0207]

Submission for OMB Review; Comment Request

Title: Head Start Grant Application

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Grant Application	2,160	1	33	71,280

Estimated Total Annual Burden Hours: 71,280.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2019-05738 Filed 3-25-19; 8:45 am]

BILLING CODE 4184-40-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-D-6535]

Standards Development and the Use of Standards in Regulatory Submissions Reviewed in the Center for Biologics Evaluation and Research; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled "Standards Development and the Use of Standards in Regulatory Submissions Reviewed in

the Center for Biologics Evaluation and Research; Guidance for Industry.” The guidance document provides the recommendations of the Center for Biologics Evaluation and Research (CBER) on the use of standards in product development and control as well as the use of such standards in CBER’s managed review process. CBER recognizes the value of standards and encourages the use of appropriate standards in the development and control of CBER-regulated medical products. Sponsors’ use of standards can facilitate product development and provide a more efficient evaluation of regulatory submissions. The guidance announced in this notice finalizes the draft guidance of the same title dated December 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on March 26, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment as well as any attachments, except for information submitted, marked, and identified as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2017-D-6535 for “Standards Development and the Use of Standards in Regulatory Submissions Reviewed in the Center for Biologics Evaluation and Research; Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jonathan McKnight, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 301-796-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Standards Development and the Use of Standards in Regulatory Submissions Reviewed in the Center for Biologics Evaluation and Research; Guidance for Industry.” The purpose of this guidance is to describe the recommendations of CBER on the use of standards in product development and control as well as the use of such standards in CBER’s managed review process. CBER recognizes the value of standards and encourages the use of appropriate standards in the development and control of CBER-regulated medical products. Sponsors’ use of standards can facilitate product development and provide a more efficient evaluation of regulatory submissions. This guidance does not endorse the activities of specific Standards Development Organizations or recommend specific standards for use in regulatory submissions.

In the **Federal Register** of December 19, 2017 (82 FR 60204), FDA announced the availability of the draft guidance of the same title dated December 2017. FDA received several comments on the draft guidance, and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated December 2017.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115).

The guidance represents the current thinking of FDA on “Standards Development and the Use of Standards in Regulatory Submissions Reviewed in the Center for Biologics Evaluation and Research.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: March 20, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–05760 Filed 3–25–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0031]

Agency Information Collection Activities; Proposed Collection; Comment Request; Clinical Laboratory Improvement Amendments Waiver 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 collections of information associated with Clinical Laboratory Improvement Amendments of 1988 (CLIA) waiver applications.

DATES: Submit either electronic or written comments on the collection of information by May 28, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 28, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 28, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2008–D–0031 for “CLIA Waiver 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:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, 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.

CLIA Waiver Applications—OMB Control Number 0910–0598—Extension

Congress passed the CLIA (Pub. L. 100–578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place. CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary), before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263a(b)). Laboratories that perform only tests that are “simple” and that have an “insignificant risk of an erroneous result” may obtain a certificate of waiver (42 U.S.C. 263a(d)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are “simple” and have “an insignificant risk

of an erroneous result” under CLIA (69 FR 22849, April 27, 2004).

On January 30, 2008, FDA published a guidance document entitled “Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices—Guidance for Industry and FDA Staff” (<https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm079632.htm>). This guidance describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application). The guidance recommends that CLIA waiver applications include a description of the features of the device that make it “simple”; a report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanisms and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate the accuracy of the test in the hands of intended operators; and statistical analyses of clinical study results.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
CLIA Waiver Application	13	1	13	1,200	15,600	\$350,000

¹ There are no capital costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
CLIA Waiver Records	13	1	13	2,800	36,400

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The total number of reporting and recordkeeping hours is 52,000 hours. FDA bases the burden on an Agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests. Based on previous years’ experience with CLIA waiver applications, FDA expects 13 manufacturers to submit one CLIA waiver application per year. The time required to prepare and submit a waiver

application, including the time needed to assemble supporting data, averages 1,200 hours per waiver application for a total of 15,600 hours for reporting. Based on previous years’ experience with CLIA waiver applications, FDA expects that each manufacturer will spend 2,800 hours creating and maintaining the record for a total of 36,400 hours.

The total operating and maintenance cost associated with the waiver application is estimated at \$350,000. This cost is largely attributed to clinical study costs incurred, which include site selection and qualification, protocol review, and study execution (initiation, monitoring, closeout, and clinical site/subject compensation—including specimen collection for study as well as shipping and supplies).

Our estimated burden for the information collection reflects a decrease of 27 responses and 27 records, and a corresponding overall decrease of 108,000 hours. We attribute this adjustment to a decrease in the average number of submissions we received over the last few years.

Dated: March 20, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-05759 Filed 3-25-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0297]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prevention of Salmonella Enteritidis in Shell Eggs During Production; Recordkeeping and Registration Provisions

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 provisions of FDA's recordkeeping and registration requirements for shell egg producers.

DATES: Submit either electronic or written comments on the collection of information by May 28, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 28, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 28, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2013-N-0297 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Prevention of *Salmonella Enteritidis* in Shell Eggs During Production; Recordkeeping and Registration Provisions." 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:

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, PRStaff@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.

Prevention of *Salmonella Enteritidis* in Shell Eggs During Production—Recordkeeping and Registration Provisions—21 CFR 118.10 and 118.11; OMB Control Number 0910-0660—Extension

Shell eggs contaminated with *Salmonella Enteritidis* (SE) are responsible for more than 140,000 illnesses per year. The Public Health Service Act (PHS Act) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce such regulations as “are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States . . . or from one State . . . into any other State” (section 361(a) of the PHS Act (42 U.S.C. 264(a))). This authority has been delegated to the Commissioner of Food and Drugs. Under section

402(a)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(4)), a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act.

Under part 118 (21 CFR part 118), shell egg producers are required to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation. Shell egg producers also are required to maintain records concerning their compliance with part 118 and to register with FDA. As described in more detail with regard to each information collection provision of part 118, each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, must refrigerate, register, and keep certain records. Farms that do not send all of their eggs to treatment are also required to have an SE prevention plan and to test for SE.

Section 118.10 of FDA's regulations requires recordkeeping for all measures the farm takes to prevent SE in its flocks. Since many existing farms participate in voluntary egg quality assurance programs, those respondents may not have to collect any additional information. Records are maintained on file at each farm site and examined there periodically by FDA inspectors.

Section 118.10 also requires each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, and does not have all of the shell eggs treated, to design and implement an SE prevention plan.

Section 118.10 requires recordkeeping for each of the provisions included in

the plan and for plan review and modifications if corrective actions are taken.

Finally, § 118.11 of FDA's regulations requires that each farm covered by § 118.1(a) register with FDA using Form FDA 3733. The term “Form FDA 3733” refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at <https://www.access.fda.gov>. We strongly encourage electronic registration because it is faster and more convenient. The system can accept electronic registrations 24 hours a day, 7 days a week. A registering shell egg producer receives confirmation of electronic registration instantaneously once all the required fields on the registration screen are completed. However, paper registrations will also be accepted. Form FDA 3733 is available for download for registration by mail or CD-ROM.

Recordkeeping and registration are necessary for the success of the SE prevention measures. Written SE prevention plans and records of actions taken due to each provision are essential for farms to implement SE prevention plans effectively. Further, they are essential for us to be able to determine compliance. Information provided under these regulations helps us to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support our enforcement activities.

Description of Respondents: Respondents to this information collection include farm sites with 3,000 or more egg laying hens that sell raw eggs to the table egg market, other than directly to the consumer.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

Description and 21 CFR section	Number of record-keepers ²	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Refrigeration Records, § 118.10(a)(3)(iv)	2,600	52	135,200	0.5 (30 minutes)	67,600
Testing, Diversion, and Treatment Records, § 118.10(a)(3)(v) through (viii) (positive) ³ .	343	52	17,836	0.5 (30 minutes)	8,918
Egg Testing, § 118.10(a)(3)(vii)	331	7	2,317	8.3	19,231
Environmental Testing, § 118.10(a)(3)(v) ³	6,308	23	145,084	0.25 (15 minutes)	36,271
Testing, Diversion, and Treatment Records, § 118.10(a)(3)(v) through (viii) (negative) ³ .	5,965	1	5,965	0.5 (30 minutes)	2,983
Prevention Plan Review and Modifications, § 118.10(a)(4).	331	1	331	10	3,310
Chick and Pullet Procurement Records, § 118.10(a)(2)	4,731	1	4,731	0.5 (30 minutes)	2,366
Rodent and Other Pest Control, § 118.10(a)(3)(ii), and Biosecurity Records, § 118.10(a)(3)(i).	9,462	52	492,024	0.5 (30 minutes)	246,012
Prevention Plan Design, § 118.10(a)(1)	350	1	350	20	7,000

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

Description and 21 CFR section	Number of recordkeepers ²	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Cleaning and Disinfection Records, § 118.10(a)(3)(iii) ...	331	1	331	0.5 (30 minutes)	166
Total					393,857

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Some records are kept on a by-farm basis and others are kept on a by-house basis.

³ Calculations include requirements for pullet and layer houses.

We are basing our estimates for the recordkeeping burden and the reporting burden on our experience with similar recordkeeping activities and the number of registrations and cancellations received in the past 3 years.

The number of recordkeepers estimated in column 2 of table 1 is drawn from estimates of the total number of layer and pullet houses affected by part 118. We assume that those farms that were operating according to recognized industry or State quality assurance plans prior to their compliance date under part 118 were already largely in compliance with the plan design and recordkeeping provisions discussed in this section, and therefore did not experience additional costs to comply with recordkeeping provisions. We found that 59 percent of farms with more than 50,000 layers are members of State or industry quality assurance plans. Fewer than 8 percent of farms with fewer than 50,000 layers are members of quality assurance plans. Thus, we estimate the number of layer farms incurring a new recordkeeping burden because of part 118 to be 2,600, and the number of houses affected to be 4,731.

Prevention plan design (§ 118.10(a)(1)) records are kept on a per farm basis, so we assume that new prevention plan design is only undertaken by new entrants to the industry. Refrigeration records (§ 118.10(a)(3)(iv)) are also kept on a per farm basis so the estimated number of recordkeepers for this provision is 2,600.

Records of chick and pullet procurement (§ 118.10(a)(2)), rodent and other pest control (§ 118.10(a)(3)(ii)), and biosecurity (§ 118.10(a)(3)(i)) are kept on a per house basis, so the estimated number of recordkeepers for these provisions is 4,731.

Records of cleaning and disinfection (§ 118.10(a)(3)(iii)) are also kept on a per house basis, but only need to be kept in the event that a layer house tests environmentally positive for SE. Prevention plan review and modifications (§ 118.10(a)(4)) also need to be performed every time a house tests

positive, which we estimate that 7.0 percent test positive. Therefore, the number of recordkeepers for these provisions is calculated to be 331 (4,731 houses $\times$ 0.070) annually.

Records of testing, diversion, and treatment (§ 118.10(a)(3)(v) through (viii)) are kept on a per house basis and include records on flocks from pullet houses. We estimate that there are one-third as many pullet houses as there are layer houses. Therefore, the total number of recordkeepers for these provisions is 6,308 (4,731 + (4,731/3)). The number of annual records kept depends on whether houses test positive for SE. Annually, 343 layer and pullet houses ((4,731 layer houses $\times$ 0.070) + (4,731/3 pullet houses) $\times$ 0.0075) are expected to test positive and 5,965 are expected to test negative ((4,731 layer houses $\times$ 0.930) + (4,731/3 pullet houses) $\times$ 0.9925).

We assume that refrigeration records are kept on a weekly basis on a per farm basis under § 118.10(a)(3)(iv)). We estimate that 2,600 recordkeepers maintain 52 records each for a total of 135,200 records and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for refrigeration records is calculated to be 67,600 hours (135,200 records $\times$ 0.5 hour).

We assume that records of testing, diversion, and treatment under § 118.10(a)(3)(v) through (viii) are kept weekly in the event a layer house tests environmentally positive for SE. We estimate that 343 layer and pullet houses test positive and thus 343 recordkeepers maintain 52 records each for a total of 17,836 records and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for testing, diversion, and treatment records in the event of a positive test result is calculated to be 8,918 hours (17,836 records $\times$ 0.5 hour).

Given a positive environmental test for SE, we estimate the weighted average number of egg tests per house under § 118.10(a)(3)(vii)) to be 7. We estimate that 331 recordkeepers maintain 7 records each for a total of 2,317 records and that it takes

approximately 8.3 hours per recordkeeping. Thus, the total annual burden for egg testing is calculated to be 19,231 hours (2,317 records $\times$ 8.3 hours).

We estimate that all 1,577 pullet and 4,731 layer houses not testing prior to their compliance date under part 118 (6,308 recordkeepers) incur the burden of a single environmental test annually under § 118.10(a)(3)(v)). The number of samples taken during the test depends on whether a farm employs the row based method (an average of 12 samples per house) or the random sampling method (32 samples per house). We estimate that roughly 50 percent of the houses affected employ a row based method and 50 percent employ a random sampling method, implying an average of 23 samples per house. The time burden of sampling is estimated on a per swab sample basis. We assume it takes 15 minutes to collect and pack each sample. Thus, the total annual burden for environmental testing is calculated to be 36,271 hours (145,084 records $\times$ 0.25 hour).

We estimate that records of testing, diversion, and treatment under § 118.10(a)(3)(v) through (viii) are kept annually in the event a layer house tests environmentally negative for SE. We estimate that 5,965 layer and pullet houses test negative and thus 5,965 recordkeepers maintain 1 record of that testing that takes approximately 0.5 hour per record. Thus, the total annual burden for testing, diversion, and treatment records in the event of a negative test result is calculated to be 2,983 hours (5,965 records $\times$ 0.5 hour).

Prevention plan review and modifications under § 118.10(a)(4)) need to be performed every time a house tests positive. We estimate that 331 layer houses test positive requiring plan review and modifications and that it takes 10 hours to complete this work. Thus, the total annual burden for prevention plan review and modifications in the event of a positive test result is calculated to be 3,310 hours (331 records $\times$ 10 hours).

We estimate that chick and pullet procurement records under

§ 118.10(a)(2) is kept roughly once annually per layer house basis. We estimate that 4,731 layer houses maintain 1 record each and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for chick and pullet procurement recordkeeping is calculated to be 2,366 hours (4,731 records × 0.5 hour).

We estimate that rodent and other pest control records under § 118.10(a)(3)(ii) and biosecurity records under § 118.10(a)(3)(i) are kept weekly on a per layer house basis. We assume that 4,731 layer houses maintain a weekly record under each provision.

Thus, we estimate 9,462 recordkeepers maintain 52 records each for a total of 492,024 records. We estimate a recordkeeping burden of 0.5 hours per record for a total of 246,012 burden hours (492,024 records × 0.5 hour).

New prevention plan design required by § 118.10(a)(1) is only undertaken by new farms and records are kept on a per farm basis. We estimate that there are 350 new farm registrations annually, and we assume that this reflects 350 new farms requiring prevention plan design. This is an increase from our previous estimate based on new registrations received. We estimate that it takes 20 hours to complete this work.

Thus, the total annual burden for prevention plan design is calculated to be 7,000 hours (350 records × 20 hours).

Cleaning and disinfection recordkeeping under § 118.10(a)(3)(iii) needs to be performed every time a house tests positive. We estimate that 331 layer houses test positive requiring 1 record each and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for cleaning and disinfection recordkeeping in the event of a positive test result is calculated to be 166 hours (331 records × 0.5 hour).

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN¹

Description and 21 CFR section	Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Registrations or Updates, § 118.11	² FDA 3733	350	1	350	2.3	805
Cancellations, § 118.11	FDA 3733	30	1	30	1	30
Total						835

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² The term "Form FDA 3733" refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at <http://www.access.fda.gov> per § 118.11(b)(1).

This estimate is based on the average number of new shell egg producer registrations and cancellations received in the past 3 years under § 118.11. We estimate that we will receive an average of 350 registrations or updates per year over the next 3 years and that it takes the average farm 2.3 hours to register, taking into account that some respondents completing the registration may not have readily available internet access. Thus, the total annual burden for new shell egg producer registrations or updates is calculated to be 805 hours (350 respondents × 2.3 hours).

We estimate that we will receive 30 cancellations per year over the next 3 years and that cancelling a registration, on average, requires a burden of 1 hour, taking into account that some respondents may not have readily available internet access. Thus, the total annual burden for cancelling shell egg producer registrations is calculated to be 30 hours (30 cancellations × 1 hour).

We have increased our burden estimate for the information collection based on an increase in annual new farm registrations.

Dated: March 20, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-05757 Filed 3-25-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Appointment to the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) is soliciting nominations of individuals who are interested in being considered for appointment to the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council) as a voting member or as a non-voting liaison representative member from an organization and/or interest group. Nominations from qualified individuals who wish to be considered for appointment to either member category of the Advisory Council are currently being accepted.

DATES: Nominations must be received no later than 5:00 p.m. ET on May 10, 2019.

ADDRESSES: Information on how to submit a nomination is on the Advisory Council website, <http://www.hhs.gov/ash/carb/>.

FOR FURTHER INFORMATION CONTACT:

Jomana Musmar, Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room L133, Switzer Building, 330 C. St. SW, Washington, DC 20201. Phone: (202) 690-5566; email: CARB@hhs.gov. The Advisory Council charter may be accessed online at <http://www.hhs.gov/ash/carb/>. The charter includes detailed information about the Advisory Council's purpose, function, and structure.

SUPPLEMENTARY INFORMATION: Under Executive Order 13676, dated September 18, 2014, authority was given to the Secretary of HHS to establish the Advisory Council, in consultation with the Secretaries of Defense and Agriculture. Activities of the Advisory Council are governed by the provisions of Public Law 92-463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees. The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to: Preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and

conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The Advisory Council is authorized to consist of not more than 30 members, including the voting and non-voting members and the Chair and Vice Chair. The current composition of the Advisory Council consists of 15 voting members, including the Chair and Vice Chair, five non-voting liaison representative members, and 10 non-voting *ex-officio* members.

This announcement is to solicit nominations to fill eight positions in the voting member category that are scheduled to be vacated during the 2019 calendar year, and the terms of five positions in the liaison representative category that are scheduled to be vacated during the 2020 calendar year. Voting members are appointed to serve three or four-year terms, and liaison representative members are appointed to serve a two-year term.

The eight public voting members sought for this solicitation will be selected from individuals who are engaged in: Research on, or implementation of, interventions regarding efforts to preserve the effectiveness of antibiotics by optimizing their use; advancing research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthening surveillance of antibiotic-resistant bacterial infections; preventing the transmission of antibiotic-resistant bacterial infections; advancing the development of rapid point-of-care and agricultural diagnostics; furthering research on new treatments for bacterial infections; developing alternatives to antibiotics for agricultural purposes; maximizing the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal health care providers; and improving international coordination of efforts to combat antibiotic resistance.

The public voting members will represent balanced points of view from human biomedical, public health, and

agricultural fields to include surveillance of antibiotic-resistant infections, prevention and/or interruption of the spread of antibiotic-resistant threats, or development of rapid diagnostics and novel treatments. The public voting members may be physicians, veterinarians, epidemiologists, microbiologists, or other health care professionals (e.g., nurses, pharmacists, others); individuals who have expertise and experience as consumer or patient advocates concerned with antibiotic resistance, or in the fields of agriculture and pharmaceuticals; and they also may be from state or local health agencies or public health organizations. The voting public members will be appointed by the Secretary, in consultation with the Secretaries of Defense and Agriculture. All public voting members will be classified as special government employees (SGEs).

Individuals who are appointed to serve as voting members may be allowed to receive per diem and reimbursement for any applicable expenses for travel that is performed to attend meetings of the Advisory Council as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service. The Advisory Council meets, at a minimum, two times per fiscal year depending on the availability of funds. Meetings are open to the public, except as determined otherwise by the Secretary, or other official to whom the authority has been delegated, in accordance with guidelines under the Government in the Sunshine Act, 5 U.S.C. 552b(c).

The non-voting liaison representative members are selected from organizations and/or interest groups that have involvement in the development, testing, licensing, production, procurement, distribution, and/or use of antibiotics and/or antibiotic research. Organizations are invited to participate as non-voting liaison representatives as it is deemed necessary by the Secretary or designee to accomplish the established mission of the Advisory Council. Non-voting liaison representative members are appointed to serve two-year terms. Individuals from the following sectors are being sought to serve as non-voting liaison representatives:

- Professional organizations or associations representing providers or professionals for human and/or animal health involved in infection control and prevention; this can include physicians, nurses, pharmacists, microbiologists, veterinarians.
- Public health, environmental health, and/or animal health

organizations or associations (state/territorial, county, or local) representing laboratories, health officials, epidemiologists, agricultural state departments, or environmental associations.

- Other organizations representing patients and consumer advocates, hospitals, pharmaceutical industry, food producers and retailers, or other commodity groups.

Individuals who are appointed to serve as non-voting liaison representative members may be allowed to receive per diem and reimbursement for any applicable expenses for travel that is performed to attend meetings of the Advisory Council in accordance with federal travel regulations. The Advisory Council meets, at a minimum, two times per fiscal year depending on the availability of funds. Meetings are open to the public, except as determined otherwise by the Secretary or other official to whom the authority has been delegated in accordance with guidelines under the Government in the Sunshine Act, 5 U.S.C. 552b(c).

Nominations, including self-nominations, of individuals who represent organizations that have the specified expertise and knowledge sought will be considered for appointment as non-voting liaison representative members of the Advisory Council.

Every effort will be made to ensure that the membership of federal advisory committees is fairly balanced in terms of points of view represented. Detailed information on what is required in a nomination package and how to submit one is on the Advisory Council website, <http://www.hhs.gov/ash/carb/>.

Dated: March 12, 2019.

Jomana F. Musmar,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Committee Manager.

[FR Doc. 2019-05751 Filed 3-25-19; 8:45 am]

BILLING CODE 4150-28-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability; Amendment

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice; amendment.

SUMMARY: A notice was published in the **Federal Register** on Monday, March 11, 2019 (Vol. 84, No. 47, pages 8731-8732),

to give notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a meeting on April 15–16, 2019. The notice is being amended to include a registration link for any individuals who wish to attend the meeting in-person, as well as a link to the ACBTSA website for more information.

DATES: The meeting will take place Monday April 15, 2019, from 8 a.m.–4:30 p.m. and Tuesday April 16, 2019, from 8:30 a.m.–4 p.m.

ADDRESSES: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, (Conference Room 800), 200 Independence Ave. SW, Washington, DC 20201. Members of the public may also attend the meeting via webcast. Instructions for attending this virtual meeting will be posted prior to the meeting at: <https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html>.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Designated Federal Officer for the ACBTSA, Senior Advisor for Blood and Tissue Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Suite L100, Washington, DC 20024. Phone: (202) 795–7697; Fax: (202) 691–2102; Email: ACBTSA@hhs.gov.

SUPPLEMENTARY INFORMATION: In-person attendance at the meetings is limited by security restrictions and the space available; therefore preregistration for public members is required and can be accomplished by registering at <https://www.eventbrite.com/e/50th-meeting-of-the-hhs-advisory-committee-on-blood-tissue-safety-availability-tickets-55285257694> by Monday, April 8, 2019. Members of the public may also attend the meeting via webcast. Instructions for attending this virtual meeting will be posted prior to the meeting at: <https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html>. Non-U.S. citizens who plan to attend in person are required to provide additional information and must notify the Working Group support staff via email at tickbornedisease@hhs.gov before March 15, 2019. Members of the public who wish to attend the meetings should enter from Independence Avenue. Please allow extra time to get through security.

Dated: March 13, 2019.

James J. Berger,
Senior Advisor for Blood and Tissue Policy.
[FR Doc. 2019–05716 Filed 3–25–19; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; International Research Training and Mentored Research Career Development Projects.

Date: April 2–3, 2019.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

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.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program 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: March 20, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05673 Filed 3–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0131]

Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island

AGENCY: Coast Guard, DHS.

ACTION: Notice of study and public meetings; request for comments.

SUMMARY: In order to provide safe access routes for the movement of vessel traffic offshore of the Massachusetts and Rhode Island area of the United States for vessels proceeding to or from ports or places of the United States and transiting within the United States Exclusive Economic Zone (EEZ), the Coast Guard is conducting a Massachusetts and Rhode Island Port Access Route Study (MARIPARS) to evaluate the need for establishing vessel routing measures. The information gathered during this MARIPARS may result in the establishment of one or more vessel routing measures. The goal of the MARIPARS is to enhance navigational safety by examining existing shipping routes and waterway uses. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must be received by the Coast Guard on or before May 28, 2019. Two public meetings will be held to provide an opportunity for comments about the MARIPARS on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m. and on Thursday, April 25, 2019, from 6 p.m. to 9 p.m. Written comments and related material may also be submitted to Coast Guard personnel at the meetings. All comments and related material submitted after the meetings must be received by the Coast Guard on or before May 28, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Daylight Time on the last day of the comment period.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0131 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

The public meeting on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m., will be

held at Corless Auditorium (Watkins Laboratory Building), University of Rhode Island, Graduate School of Oceanography at 215 South Ferry Road, Narragansett, RI 02882-1197.

The public meeting on Thursday, April 25, 2019, from 6 p.m. to 9 p.m., will be held at Flanagan Hall, Massachusetts Maritime Academy at 101 Academy Drive, Buzzards Bay, MA 02532.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice or study call or email the Project Officer, Mr. Edward G. LeBlanc, Chief of Coast Guard Sector Southeastern New England Waterways Management Division, telephone (401) 435-2351; email Edward.G.LeBlanc@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials to the online public docket or orally at the public meetings. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments: If you submit comments to the online public docket, please include the docket number for this rulemaking (USCG-2019-0131), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. We accept anonymous comments.

To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG-2019-0131" in the "search box." Click "Search." Then click "Comment Now." We will consider all comments and material received during the comment period.

B. Public Meetings: We plan to hold two public meetings to receive oral comments on this notice. If you bring written comments to the public meeting, you may submit them to Mr. Edward G. LeBlanc. These comments will be added to our online public docket. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. Attendance at the public meeting is not required. We will provide a written summary of the oral comments

received and will place that summary in the docket.

The first public meeting on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m., will be held at Corless Auditorium (Watkins Laboratory Building), University of Rhode Island, Graduate School of Oceanography, 215 South Ferry Road, Narragansett, RI 02882-1197.

The second public meeting on Thursday, April 25, 2019, from 6 p.m. to 9 p.m., will be held at Flanagan Hall, Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA 02532.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Mr. Edward Leblanc at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

C. Viewing the comments and documents: To view the comments and documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2019-0131" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

D. Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316) <https://www.federalregister.gov/documents/2008/01/17/E8-785/privacy-act-of-1974-system-of-records>.

II. Purpose and Background

A. Requirement for Port Access Route Studies: Under 46 U.S.C. 70003 the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

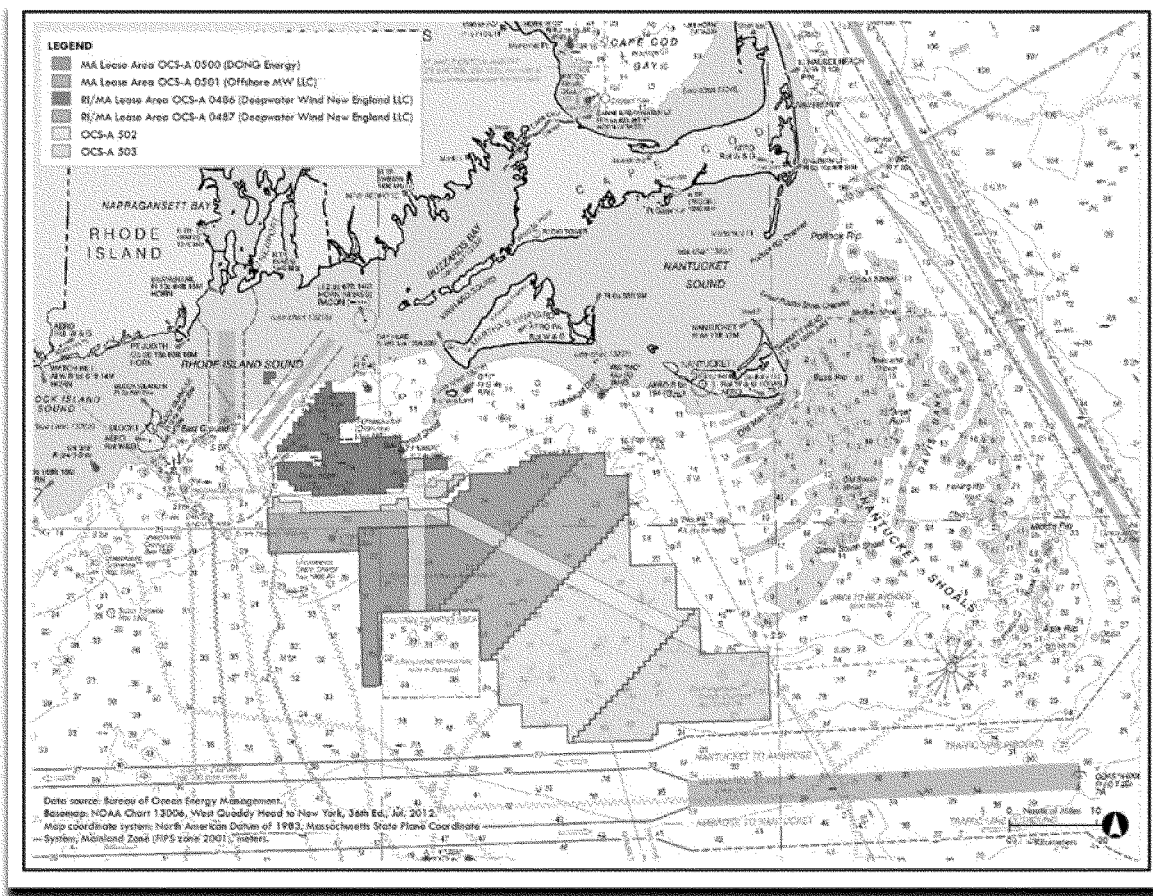
Before establishing or adjusting fairways or TSSs, 46 U.S.C. 70003 requires the Coast Guard to conduct a

port access route study (PARS), *i.e.* a study of potential traffic density and the need for safe access routes for vessels. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as construction and operation of renewable energy facilities and other uses of the Atlantic Ocean in the study area.

B. Previous port access route studies: In 2011, the Coast Guard conducted a PARS which focused on the entire Atlantic Coast from Maine to Florida to analyze all vessel traffic proceeding to and from all Atlantic Coast ports and transiting through the United States Exclusive Economic Zone (EEZ). The Atlantic Coast Port Access Route Study Final Report is available at the Coast Guard Navigation Center website https://navcen.uscg.gov/pdf/PARS/ACPARS_Final_Report_08Jul2015_Combined_Appendix_Enclosures_Final_After_LMI_Review.pdf.

C. Necessity for a new port access route study: The Bureau of Ocean Energy Management (BOEM) has leased seven adjacent areas of the outer continental shelf (OCS) south of Martha's Vineyard and east of Rhode Island that together constitute the MA/RI Wind Energy Area (WEA). Potentially seven distinct offshore renewable energy installations ("wind farms") could be constructed, each with its own number, size, type of wind turbines, and distinct turbine layout. The topic of safe navigation routes to facilitate vessel transit through the MA/RI WEA has been discussed at various forums throughout southeastern New England. The forums have included participation by the Coast Guard, other federal, state, and local agencies, fishing industry representatives, and a myriad of stakeholders. Various different transit plans have been proposed through these different forums.

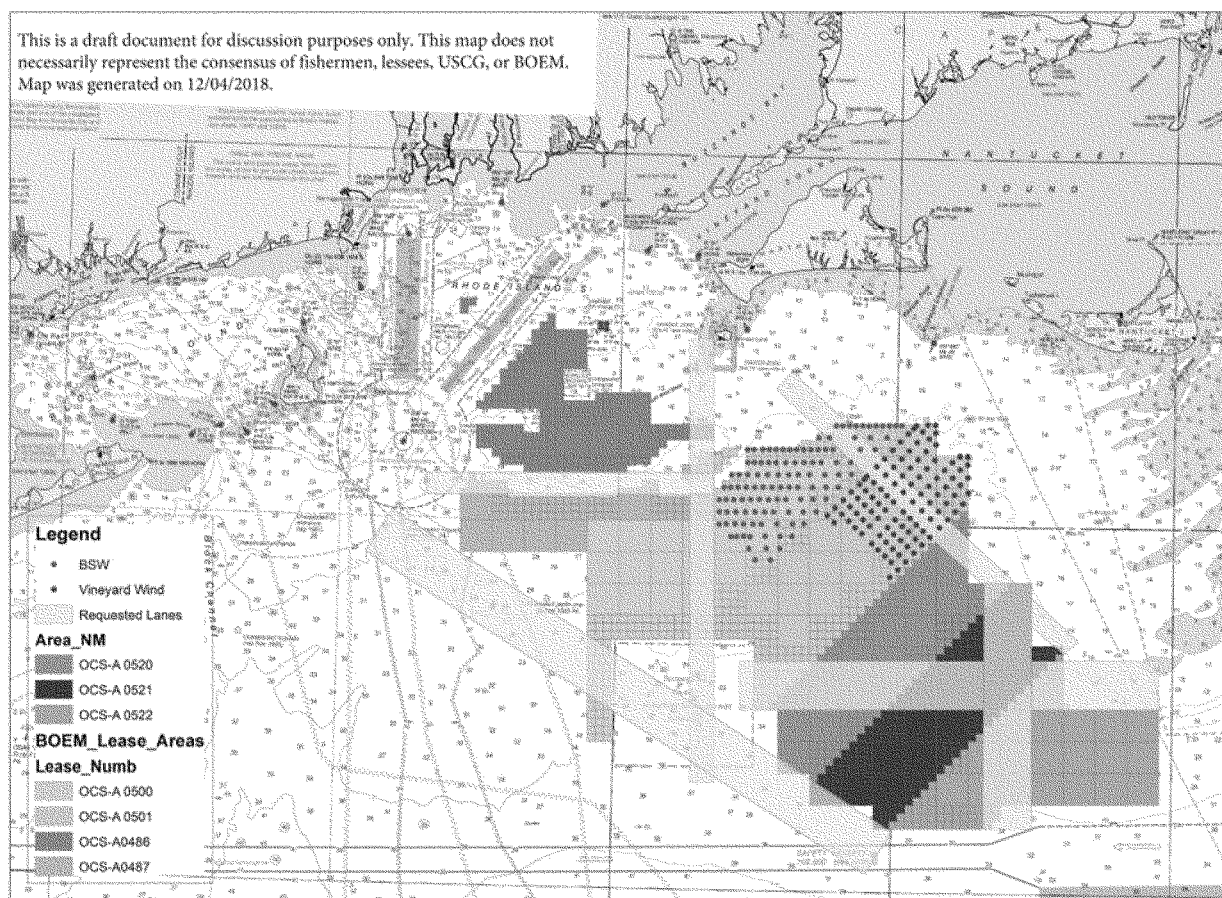
In September 2018, the Massachusetts Coastal Zone Management Fisheries Working Group offered a vessel transit layout as depicted at <https://www.mass.gov/service-details/fisheries-working-group-on-offshore-wind-energy> and below:



A colored illustration is available in the docket.

In December 2018, the Responsible Offshore Development Alliance (RODA), <https://www.rodafisheries.org/>, offered

an alternative layout for consideration by stakeholders:



A colored illustration is available in the docket.

Though neither of these alternatives achieved consensus of all stakeholders, they serve as a basis for further discussion of the issue and are provided here for that purpose. Comments on these alternative proposals are welcome, but comments need not be limited to them.

III. This PARS: Timeline, Study Area, and Process

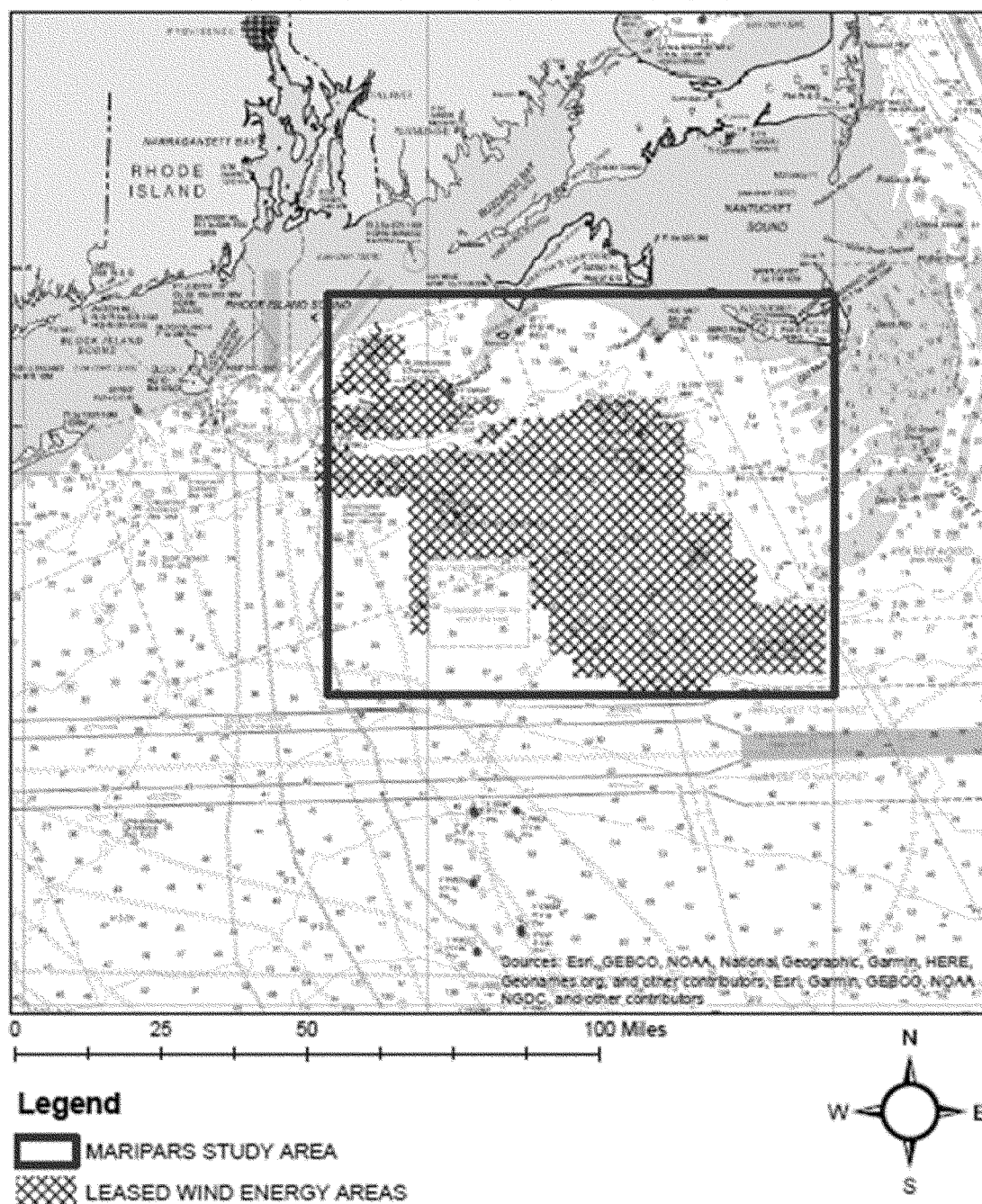
The First Coast Guard District Waterways Management Division and Coast Guard Sector Southeastern New England Waterways Management Division will conduct this PARS. The study will begin upon publication of this notice and should take approximately six months to complete.

The study area is described as an area bounded by a line connecting the following geographic positions:

- 41°20' N, 070°00' W;
- 40°35' N, 070°00' W;
- 40°35' N, 071°15' W;
- 41°20' N, 071°15' W.

Below is an illustration showing the study area.

The Areas Offshore of MA and RI Port Access Route Study Area USCG-2019-0131



A color illustration is available in the docket.

The Coast Guard will use the PARS process described in Appendix D to Commandant Instruction 16003.2A,

Marine Planning to Operate and Maintain the National Marine Transportation System (MTS) and

Implement National Policy, which is available in the docket or see <https://media.defense.gov/2017/Mar/15/>

2001716995/-1/-1/0/CI_16003_2A.PDF, as a guide.

IV. Possible Scope of the Recommendations

We are attempting to determine what, if any, navigational safety concerns exist with vessel transits in the study area. We expect that information gathered during the study will help us identify anticipated impacts to navigation that may be experienced by mariners intending to transit in, around and through the study area which includes the MA/RI Wind Energy Area (MA/RI WEA) which is an area of wind farm leases south of Martha's Vineyard. All leases are currently being studied for development including the construction of wind energy generating turbines affixed to the sea floor. These installations could impact routes used to access ports (e.g., transiting from Georges Bank through the MA/RI WEA to New Bedford; or from the vicinity of Montauk, NY/Point Judith, RI, to Georges Bank, etc.). Impacts could result from factors such as number, size, type, and layout of wind farm turbines and electric service platform(s), subsea cabling, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. Comments should include or reference data (both empirical and anecdotal) where available, published studies (academic, government, or industry), and other supporting documentation.

As part of this study, we may collect and analyze data and other information on vessel traffic characteristics and trends in an attempt to balance the needs of all waterway users.

This MARIPARS includes the following objectives:

1. Determine present vessel traffic types, patterns, and density;
2. Determine potential vessel traffic types, patterns, and density;
3. Determine if existing vessel routing measures are adequate;
4. Determine if existing vessel routing measures require modifications;

5. Determine the type of modifications;
6. Define and justify the needs for new vessel routing measures;
7. Determine the type of new vessel routing measures; and
8. Determine if the usage of the vessel routing measures must be mandatory for specific classes of vessels.

We will publish the results of the PARS in the **Federal Register**. It is possible the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

This notice is published under the authority of 46 U.S.C. 70004 and 5 U.S.C. 552(a).

Dated: March 21, 2019.

G. D. Case,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2019-05730 Filed 3-25-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMK Resources, Inc. (Kenner, LA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of NMK Resources, Inc. (Kenner, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. (Kenner, LA), has been approved to gauge petroleum and

certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 20, 2017.

DATES: NMK Resources, Inc. (Kenner, LA) was approved and accredited as a commercial gauger and laboratory as of July 20, 2017. The next triennial inspection date will be scheduled for July 2020.

FOR FURTHER INFORMATION CONTACT:

Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc. 2330 Helena Street, Kenner, LA 70065, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

NMK Resources, Inc. (Kenner, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

NMK Resources, Inc. (Kenner, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and

receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border

Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or

gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: February 28, 2019.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2019-05758 Filed 3-25-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMK Resources, Inc. (Roselle, NJ) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of NMK Resources, Inc. (Roselle, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. (Roselle, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 29, 2018.

DATES: NMK Resources, Inc. (Roselle, NJ) was approved and accredited as a commercial gauger and laboratory as of May 29, 2018. The next triennial inspection date will be scheduled for May 2021.

FOR FURTHER INFORMATION CONTACT:

Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc. 1100 Walnut St., Roselle, NJ 072035, has been approved

to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. NMK Resources, Inc. (Roselle, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

NMK Resources, Inc. (Roselle, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
	D97	Standard Test Method for Pour Point of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: February 28, 2019.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2019-05761 Filed 3-25-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Review of the 2018 Biennial National Strategy for Transportation Security (NSTS)

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Transportation Security Administration (TSA) is publishing this notice to enhance the scope of the agency's consultation in developing the

2020 Biennial National Strategy for Transportation Security (2020 NSTS). Commenters are asked to review the 2018 NSTS base plan (which describes the risk-based foundation of the strategy and sets forth the mission, vision, goals, priorities, and risk-based actions to reduce the vulnerabilities of nationally significant transportation assets against terrorist threats) and submit any comments/edits/questions they may have to inform development of the 2020 NSTS.

DATES: Submit comments by April 25, 2019.

ADDRESSES: Comments may be emailed to TransportationSector@tsa.dhs.gov or mailed to the Strategy, Policy Coordination, & Innovation Office (SP&I), Transportation Security Administration (TSA-28), 601 South 12th Street, Arlington, VA 20598-0028.

FOR FURTHER INFORMATION CONTACT: Dianna Davis-Small at the above

address, or by telephone at (571) 227-5425.

SUPPLEMENTARY INFORMATION:

Background

The NSTS addresses the security of “transportation assets in the United States that . . . must be protected from attack or disruption by terrorist or other hostile forces. . . .” 49 U.S.C. 114(s)(3). The NSTS presents a forward-looking, risk-based plan to provide for the security and freedom of movement of people and goods while preserving civil rights, civil liberties, and privacy. It identifies objectives to enhance the security of transportation infrastructure, conveyances, workers, travelers, cargo, and operations.

Consistent with its authorities, TSA’s mission is to protect the nation’s transportation systems from acts of terrorism, while its vision is an agile security agency, embodied by a professional workforce, that engages its partners and the American people to outmatch a dynamic threat. The NSTS is an important part of fulfilling this mission. TSA leads the development of the NSTS through joint participation with the Department of Transportation and in consultation with government partners and industry owners and operators. The 2018 NSTS includes three objectives: (1) Manage risks to transportation systems from terrorist attacks and enhance system resilience, (2) enhance effective domain awareness of transportation systems and threats, and (3) safeguard privacy, civil liberties, and civil rights, and the freedom of movement of people and commerce.

Comments Invited

TSA is soliciting comments through this notice to enhance the scope of consultation on the 2020 NSTS. Under the statutory requirement to develop the NSTS, TSA is also required to consult with “Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities). See 49 U.S.C. 114(s)(7). TSA has consistently met that requirement through its regular stakeholder outreach efforts. For the 2020 NSTS, TSA is publishing this notice requesting comments to enhance input and ensure there are no untapped sources of information from governments, agencies, transportation-related associations, private sector entities, labor organizations, institutions of higher learning, and other entities beyond the scope of our normal interaction with stakeholders.

TSA is specifically requesting comments on issues that have the potential for significant impacts on the security and resilience of the transportation systems. Because the 2018 NSTS was delivered to Congress on April 4, 2018, the 2020 update will only require revisions to reflect recent changes in the risk environment. Respondents are asked to provide substantive revisions for any changes. We also request that with your comment submissions, you include your name, contact information, affiliation, and the mode or sector you are representing (if applicable). TSA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable.

Please consider the following in your review.

- The NSTS is a counterterrorism strategy, not an all-hazards plan.
- The NSTS addresses risk-based priorities to protect vital transportation assets from terrorist attack. Consistent with 49 U.S.C. 114(s)(3)(A), the scope of vital transportation assets relevant to the NSTS is defined by whether, in the interests of national security and commerce, the asset must be protected from attack or disruption by terrorists or other hostile forces.
- The strategic environment considers the risks (threats, vulnerabilities, and potential consequences) of a terrorist attack.

TSA is specifically interested in comments on the following issues:

- Does the 2018 NSTS adequately and accurately capture risk-based priorities that identify the types of activities modal security officials in Government and industry should pursue to manage terrorism risks?
- Do the goals aggregate the major elements of the vision into basic, all-encompassing buckets (e.g., “Manage Risks to Transportation Systems from Terrorist Attack and Enhance System Resilience” underneath the Vision of “A secure and resilient transportation system”)?
- Does the Path Forward address programmatic commitments needed to advance security of transportation assets and systems?

The most helpful comments reference a specific portion of the 2018 NSTS, explain the reason for any recommended change, and include supporting data, information, or authority that supports such a recommended change. A copy of the 2018 Biennial NSTS can be found by accessing the TSA Freedom of Information Act (FOIA) Reading Room via the following weblink: [https://](https://www.tsa.gov/sites/default/files/foia-readingroom/tsa_biennial_national_strategy_for_transportation_security_cleared_and_final_4.4.18_base_plan.pdf)

www.tsa.gov/sites/default/files/foia-readingroom/tsa_biennial_national_strategy_for_transportation_security_cleared_and_final_4.4.18_base_plan.pdf.

Dated: March 15, 2019.

David P. Pekoske,
Administrator.

[FR Doc. 2019-05693 Filed 3-25-19; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No: FR-6146-N-01]

Privacy Act of 1974; Matching Program

AGENCY: Office of Administration, HUD.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of its intent to execute a new computer matching agreement with Social Security Administration for a recurring matching program with HUD’s Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of SSN’s and benefit information provided by participants in any authorized HUD rental housing assistance program. HUD will obtain SSA data and make the results available to: (1) Program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) (collectively referred to as POAs) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and (2) contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As.

The most recent renewal of the current matching agreement will expire on May 7, 2019.

DATES: The computer matching agreement (CMA) will become applicable at the later of the following two dates: May 8, 2019 or 30 days after the publication of this notice, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the applicable date and may be extended for an additional 12 months, if the respective agency Data Integrity Boards (DIBs) determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Interested persons are invited to submit comments regarding this notice at www.regulations.gov or to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, Room 10110, SW, Washington, DC 20410.

Communications should refer to the above docket number. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: John Bravacos, Departmental Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10226, Washington, DC 20410, telephone number (202) 402-6064. This is not a toll-free number. A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877-8339 (Federal Relay Service).

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on October 3, 2016, at 81 FR 68026. Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of, rental assistance. The computer matching program may provide indicators of potential tenant unreported or under-reported income, which will require additional verification to identify inappropriate or inaccurate rental assistance and may provide indicators for potential administrative or legal actions. The matching program will be carried out to detect inappropriate or inaccurate rental assistance under sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, section 202 of the Housing Act of 1959, section 811 of the Cranston-Gonzalez National Affordable Housing Act, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act (QHWRA) of 1998. On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance program (DHAP) as a covered HUD rental assistance program in HUD computer matching activities.

Specifically, the computer matching program will match HUD's tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

Participating Agencies: Department of Housing and Urban Development and the Social Security Administration.

Authority for Conducting the Matching Program: This matching program is being conducted pursuant to the Privacy Act of 1974 (5 U.S.C 552a); 542(b) of the 1998 Appropriations Act (Pub. L. 105-65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701-1750g); the United States Housing Act of 1937 (42 U.S.C. 1437-1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the QHWRA Act of 1998 (42 U.S.C. 1437a(f)). The Housing and Community Development Act of 1987 authorizes HUD to require participants of HUD rental housing assistance programs to disclose their social security numbers (SSNs) to HUD as a condition of continuing (or initial) eligibility for participation in the programs. The QHWRA of 1998, section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the PHA of income information received by the tenant from HUD as part of the income verification procedures of HUD. The QHWRA was amended by Public Law 106-74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participant's eligibility or level of benefits.

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final Rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant income information during mandatory reexaminations or recertifications of family composition and income; and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (24 CFR 5.233).

This computer matching program also assists HUD in complying with the

following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111-204);
2. Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" (June 18, 2010);
3. Office of Management and Budget M-10-13, Issuance of Part III to OMB Circular A-123, Appendix C;
4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);
5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);
6. Improper Payments Information Act of 2002 (Pub. L. 107-300); and
7. Office of Management and Budget M-03-13, Improper Payments Information Act of 2002 Implementation Guide.

Purpose(s): HUD's primary objective of the computer matching program is to verify the income of participants in certain rental assistance programs to determine the appropriate level of rental assistance, and to detect, deter and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives, HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to PHAs, and O/As, by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the Quality Housing and Work Responsibility Act (QHWRA) of 1998, PHAs operating Public Housing programs may offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Other objectives of this computer matching program include: (1) Increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of the Social Security death data and benefit information, and income reporting of

program participants; and (3) measure improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants.

Categories of Individuals

Covered Programs

This notice of computer matching program applies to individuals receiving assistance from the following rental assistance programs:

- A. Disaster Housing Assistance Program (DHAP)
- B. Public Housing
- C. Section 8 Housing Choice Vouchers (HCV)
- D. Project-Based Vouchers
- E. Section 8 Moderate Rehabilitation
- F. Project-Based Section 8
 - 1. New Construction
 - 2. State Agency Financed
 - 3. Substantial Rehabilitation
 - 4. Sections 202/8
 - 5. Rural Housing Services Section 515/8
 - 6. Loan Management Set-Aside (LMSA)
 - 7. Property Disposition Set-Aside (PDSA)
- G. Section 101 Rent Supplement
- H. Section 202/162 Project Assistance Contract (PAC)
- I. Section 202 Project Rental Assistance Contract (PRAC)
- J. Section 811 Project Rental Assistance Contract (PRAC)
- K. Section 236 Rental Assistance Program
- L. Section 221(d)(3) Below Market Interest Rate (BMIR)

Note: This notice does not apply to the Low-Income Housing Tax Credit (LIHTC) or the Rural Housing Services Section 515 without Section 8 programs.

Categories of Records: The following are the categories of record in this matching agreement:

HUD will provide SSA with the following information for each individual for whom HUD requests information:

- First name
- Last name
- SSN
- DOB

SSA will provide HUD with the following information for each individual for whom HUD requests information:

- The amount of monthly benefits for each recipient of Title II, Title XVI, and Title VIII benefits
- SSN match/no match response
- In the case of a “no match”, the reason for the no match response in the form of an error code.

System(s) of Records: SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and dates of birth) to tenant data that HUD supplies from its systems of records known as the *Tenant Rental Assistance Certification System* (TRACS), a component of HUD’s Tenant Housing Assistance and Contract Verification Data System (HUD/H–11), and the *Inventory Management System* (IMS), formerly known as the *Public and Indian Housing Information Center* (PIC) (HUD/PIH.01). The notice for these systems was published at 81 FR 56684 on August 22, 2016, and 77 FR 22337 on April 13, 2012, respectively. Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

SSA will match the tenant records included in HUD/H–11 and HUD/PIH–4 to their systems of records known as SSA’s *Master Files of Social Security Number Holders, and SSN Applications* (60–0058), published at 75 FR 82121 on December 29, 2010; *Master Beneficiary Record* (60–0090), published at 71 FR 1826 on January 11, 2006; and *Supplemental Security Income Record and Special Veterans Benefits* (60–0103), published at 71 FR 1830 on January 11, 2006. HUD will place the resulting matched data into its *Enterprise Income Verification (EIV) system* (HUD/PIH–5). The notice for this system was initially published at 70 FR 41780 on July 20, 2005, and last amended on September 1, 2009 (74 FR 45235). The tenant records (one record for each family member) include these data elements: Full name, SSN, and date of birth.

HUD data will also be matched to the SSA’s *Master Files of Social Security Number Holders, and SSN Applications* (60–0058) for the purpose of validating SSNs of participants of HUD rental assistance programs to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate rental assistance.

Dated: March 21, 2019.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2019–05763 Filed 3–25–19; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Female Fashion Dresses, Jumpsuits, Maxi Skirts and Accountrements*, DN 3375; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant’s filing pursuant to the Commission’s Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission’s Rules of Practice and Procedure filed on behalf of Style Pantry LLC on March 20, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain female fashion dresses, jumpsuits, maxi skirts and accountrements. The complaint names as respondents: Amazon.com Inc. of Seattle, WA; Xunyun of China and Jianzhang Liao of China. The

complainant requests that the Commission to issue a general exclusion order and a limited exclusion order and impose a bond during the 60-day presidential review.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3375") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 20, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–05725 Filed 3–25–19; 8:45 am]

BILLING CODE 7020–02–P

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0094]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eComments Requested; Extension Without Change of a Currently Approved Collection Certification of Qualifying State Relief From Disabilities Program (ATF Form 3210.12)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 28, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Jason Gluck, Firearms Industry Programs Branch either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at Fipb-informationcollection@atf.gov, or by telephone at 202–648–7190.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection* (check justification or form 83): Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Certification of Qualifying State Relief From Disabilities Program.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3210.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other (if applicable): None.

Abstract: This form is used by a State to certify to the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) that it has established a qualifying mental health relief from firearms disabilities program, based on certain minimum criteria established by the NICS Improvement Amendment Act of 2007, Public Law 110–180, Section 105, enacted January 8, 2008 (NIAA). This certification is required for States to be eligible for certain grants authorized by the NIAA.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will utilize the form, and it will take each respondent approximately 15 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 13 hours, which is equal to 50 (# of respondents) * 1 (# of responses per respondent) * .25 (15 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 21, 2019

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–05735 Filed 3–25–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 02–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Friday, April 5, 2019

10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

11:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–05840 Filed 3–22–19; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0023]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 28, 2019.

FOR FURTHER INFORMATION CONTACT:

Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Sexual Assault Services Program—Grants to Culturally Specific Programs (SASP-Culturally Specific Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0023. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 11 grantees of the SASP Culturally Specific Program. This program supports projects that create, maintain and expand sustainable sexual assault services provided by culturally

specific organizations, which are uniquely situated to respond to the needs of sexual assault victims within culturally specific populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 11 respondents (SASP-Culturally Specific Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A SASP-Culturally Specific Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 22 hours, that is 11 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: March 21, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019-05736 Filed 3-25-19; 8:45 am]

BILLING CODE 4410-FX-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On March 20, 2019, the Department of Justice lodged a proposed Consent Decree with the District Court of the Southern District of New York in a lawsuit entitled *United States v. Columbia Gas Transmission LLC, et al.*, Civil Action No. 19-2490.

In this action the United States seeks, as provided under the Comprehensive Environmental Response, Compensation and Liability Act, recovery of response costs from three parties regarding the Port Refinery Superfund Site in the Village of Rye Brook, New York. The proposed Consent Decree resolves the United States' claims and requires Columbia Gas Transmission LLC, Henry

Schein, Inc., and Union Carbide Corporation to pay, in aggregate, \$179,647, in reimbursement of the United States' past response costs regarding the site.

The publication of this notice opens the public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Columbia Gas Transmission LLC, et al.*, Civil Action No. 19-2490, D.J. Ref. 90-11-3-1142/5. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <http://www.usdoj.gov/enrd/ConsentDecrees.html>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019-05692 Filed 3-25-19; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

On March 18, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:19-cv-601-JGC.

The Consent Decree settles claims brought by the United States and the

State of Ohio seeking recovery for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss incurred in connection with the Ottawa River Natural Resources Assessment Site, located in Toledo, Ohio, pursuant Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), and Section 311 of the Clean Water Act, 33 U.S.C. 1321. The Consent Decree requires the Defendant, the City of Toledo, Ohio, to (1) implement and maintain a restoration project, (2) finance the United State Department of Interior's ("DOI") implementation of a second restoration project and deed property to DOI to enable DOI to maintain wetlands located on DOI property, (3) pay restoration oversight costs to DOI and the Ohio Environmental Protection Agency, and (4) pay the United States and the State of Ohio a total of \$420,000 in past natural resources damage assessment costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Ohio v. City of Toledo, Ohio*, D.J. Ref. No. 90-11-3-09090/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$45.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy

without the exhibits and signature pages, the cost is \$11.75.

Randall M. Stone,

*Acting Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 2019-05710 Filed 3-25-19; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Safe Drinking Water Act

On March 18, 2019, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America v. City of New York and New York City Department of Environmental Protection*, Civil Action No. 1:19-cv-01519-RJD-CLP.

The United States filed this lawsuit to seek civil penalties and injunctive relief for violations of the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.* The alleged violations stem from the City's failure to place a cover over its Hillview Reservoir, a 90-acre treated-water reservoir in Yonkers. The reservoir holds water destined for consumers in New York City. The water arrives at the reservoir after being disinfected at the City's upstream Catskill-Delaware Water Ultraviolet Disinfection Facility, sometimes referred to as the Eastview facility, in central Westchester. The purpose of covering the reservoir is to protect the disinfected water from microbial recontamination during storage. The cover is required by the Long Term 2 Enhanced Surface Water Treatment Rule. 40 CFR 141.714.

The proposed consent decree will require the City to build the cover. At times during cover construction, the City will operate only one of the reservoir's two ("East" and "West") basins while the other basin is off-line during construction of that basin's cover (so-called "single basin operation"). The City represents that to ensure reliable water delivery during single basin operation, two precursor projects must be completed first. These two projects are the Kensico-Eastview Connection and the Hillview Reservoir Improvements. The Kensico-Eastview Connection will be a new underground aqueduct between the Eastview facility and the further upstream Kensico Reservoir. The Hillview Reservoir Improvements will include replacing sluice gates and building a new connection between the reservoir and downstream water distribution tunnels.

These two precursor projects will be built on parallel schedules. The proposed consent decree will require the City to complete the Hillview Reservoir Improvements by 2033 and the Kensico-Eastview Connection by 2035. After that, the City will be required to build the East Basin cover, with full operation to start by 2042. The City will then be required to build the West Basin cover, with full operation to start by 2049.

The proposed consent decree also requires the City to pay the United States a civil penalty of \$1 million for the City's past violations of federal requirements. In addition, the consent decree provides that the City will pay New York State a civil penalty of \$50,000 and perform a state Water Quality Benefit Project to settle the State's claim for penalties for violations of a state administrative order. The Water Quality Benefit Project will establish a redundant supervisory control and data acquisition control center. This "SCADA" control center will allow more reliable operation of the City water supply's SCADA system.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. City of New York and New York City Department of Environmental Protection*, D.J. Ref. No. 90-5-1-1-10223/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$28.75 (25 cents per page

reproduction cost) payable to the United States Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019-05711 Filed 3-25-19; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Secretary's Order 02-2019—Chief Data Officer and DOL Data Board

I. Purpose. To establish a Chief Data Officer (CDO); to formalize the Department of Labor (DOL) Data Board (Data Board); to create a data governance framework for the Department; and to create strategic value from data collected and housed throughout the Department.

II. Authorities and Directives Affected

A. Authorities.

1. This Secretary's Order (the Order) is issued pursuant to the authority granted under 29 U.S.C. 551 *et seq.*

2. A congressional statute obligates the Secretary to designate a Chief Data Officer. *See* Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115-435, 132 Stat 5529.

B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order.

III. Background. Evidence-based policymaking has necessitated a modern data infrastructure and strengthened data capacity. Across the agencies within the Department of Labor, data—which are essential to setting policy and delivering efficiently and effectively on the Department's mission of serving America's workforce—are collected every day. However, these data may not be leveraged, housed, formatted, or made public in ways that best serve the needs of DOL or its stakeholders. There needs to be a more central focus on the quality, consistency, and availability of data to inform and influence how DOL carries out its mission.

IV. Data Board

A. Purpose of the Data Board

1. The Data Board is a forum for DOL to work across organizational lines to collaborate and coordinate effectively on data strategy, management, and policy issues, as well as DOL data governance, stewardship, architecture, and utilization.

B. Responsibilities

1. The Data Board is charged with providing recommendations to the Secretary, the Deputy Secretary, and Agency Heads on the creation,

implementation, and oversight of a data governance model that establishes authority, roles and responsibilities, management, and decision-making parameters related to the data created, collected, managed, or otherwise controlled by the Department.

2. The Data Board will develop a comprehensive initial DOL Data Strategy (the Initial Data Strategy). The Data Board will submit an Initial Data Strategy to the Secretary. Once the Secretary adopts an Initial Data Strategy, the Deputy Secretary will implement the Initial Data Strategy through appropriate memoranda. The Data Board will submit subsequent DOL Data Strategies (Subsequent Data Strategies) to the Secretary as appropriate. Once the Secretary adopts a Subsequent Data Strategy, the Deputy Secretary will implement the Subsequent Data Strategy through appropriate memoranda.

3. The Data Board will serve as the principal entity acting on the Secretary's behalf with respect to data governance issues. It will establish, coordinate, and manage policy, processes, and standards for the management of DOL data. The Data Board shall oversee Department-level data sharing agreements with external organizations and across DOL entities. The Data Board shall raise awareness and promote data management best practices across DOL entities.

4. The Data Board will coordinate with the DOL Chief Information Officer (CIO) in the development of modern solutions for managing, analyzing, protecting, disseminating, and generating data. The Data Board will use the DOL enterprise data analytics platform and other enterprise applications when assessing or recommending changes that impact infrastructure, platforms, tools, cybersecurity, hardware, software, and/or standardization, and/or centralization initiatives.

5. The Data Board should convene at least once each month.

6. The Deputy Secretary will issue written guidance, as necessary, to implement this Order.

7. The Data Board will receive assignments from the Secretary, Deputy Secretary, and Agency Heads as appropriate.

8. The Solicitor of Labor is responsible for providing legal advice to DOL on all matters arising in the implementation and administration of this Order.

C. Membership

1. The CDO is a member—and the Chair—of the Data Board.

2. The CIO is a member—and the Vice-Chair—of the Data Board.

3. The Agency Heads of the following agencies should select a Data Board Designee—who is at least a GS–12 or its equivalent—to serve on the Data Board:

- a. Bureau of International Labor Affairs;
- b. Bureau of Labor Statistics;
- c. Employee Benefits Security Administration;
- d. Employment & Training Administration;
- e. Mine Safety & Health Administration;
- f. Occupational Safety & Health Administration;
- g. Office of Congressional & Intergovernmental Affairs;
- h. Office of Disability Employment Policy;
- i. Office of Federal Contract Compliance Programs;
- j. Office of Labor-Management Standards;
- k. Office of Public Affairs;
- l. Office of the Assistant Secretary for Administration & Management;
- m. Office of the Assistant Secretary for Policy;
- n. Office of the Chief Financial Officer;
- o. Office of the Chief Information Officer;
- p. Office of the Solicitor;
- q. Office of Workers' Compensation Programs;
- r. Veterans' Employment & Training Service;
- s. Wage & Hour Division; and
- t. Women's Bureau.

V. Chief Data Officer

A. On January 14, 2019, President Trump signed the Foundations for Evidence-Based Policymaking Act of 2018 into law.¹ That statute directs the head of each agency to “designate a nonpolitical appointee employee in the agency as the Chief Data Officer of the agency.”² This Order establishes the position of Chief Data Officer. Organizationally, the CDO will be in the Office of the Assistant Secretary for Policy. The CDO will serve as the Chair of the Data Board.

B. Reports

1. At the beginning of the first quarter of the fiscal year and at the beginning of the third quarter of the fiscal year, the CDO will deliver a report to the Secretary and the Deputy Secretary on the state of the data at DOL. The report will describe DOL's data-related achievements and challenges in the preceding six-month period. The report

will also describe what steps DOL will take going forward to improve its use of data.

2. DOL's CDO shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report on DOL's compliance with the requirements of subchapter I of chapter 35 of title 44 of the United States Code, including information on each requirement that the agency could not carry out and, if applicable, what the agency needs to carry out such requirement.

C. The CDO will brief the Secretary, Deputy Secretary, and Agency Heads on data-related matters as appropriate.

D. The CDO shall be designated based on demonstrated training and experience in data management, governance (including creation, application, and maintenance of data standards), collection, analysis, protection, use, and dissemination, including with respect to any statistical and related techniques to protect and de-identify confidential data.

E. Functions of the CDO. The CDO shall:

- 1. Be responsible for lifecycle data management;
- 2. coordinate with any official in DOL responsible for using, protecting, disseminating, and generating data to ensure that the data needs of DOL are met;
- 3. manage data assets of DOL, including the standardization of data format, sharing of data assets, and publication of data assets in accordance with applicable law;
- 4. in carrying out the requirements under paragraphs (3) and (5), consult with DOL's CIO and any statistical official of DOL (as designated under section 314 of title 5 of the United States Code);
- 5. carry out the requirements of the agency under subsections (b) through (d), (f), and (i) of section 3506 of title 44 of the United States Code, section 3507 of title 44 of the United States Code, and section 3511 of title 44 of the United States Code;

6. ensure that, to the extent practicable, agency data conforms with data management best practices;

7. engage agency employees, the public, and contractors in using public data assets and encourage collaborative approaches on improving data use;

8. support DOL's Performance Improvement Officer in identifying and using data to carry out the functions described in section 1124(a)(2) of title 31 of the United States Code;

¹ See *Bill Announcement*, The White House (Jan. 14, 2019) <https://www.whitehouse.gov/briefings-statements/bill-announcement-18/>.

² See *Foundations for Evidence-Based Policymaking Act of 2018*, Public Law 115–435, 132 Stat 5529.

9. support DOL's Evaluation Officer in obtaining data to carry out the functions described in section 313(d) of title 5 of the United States Code;

10. review the impact of DOL's infrastructure on data asset accessibility and coordinate with DOL's CIO to improve such infrastructure to reduce barriers that inhibit data asset accessibility;

11. coordinate with DOL's CIO to develop modern solutions for managing, protecting, disseminating, and generating data. The CDO will use the DOL enterprise data analytics platform and other enterprise applications when assessing or recommending changes that impact infrastructure, platforms, tools, cybersecurity, hardware, software, and/or standardization, and/or centralization initiatives;

12. ensure that, to the extent practicable, DOL maximizes its use of data, including for the production of evidence (as defined in section 3561 of title 44 of the United States Code), cybersecurity, and the improvement of DOL operations;

13. identify points of contact for roles and responsibilities related to open data use and implementation (as required by the Director of the Office of Management and Budget);

14. serve as DOL's liaison to other agencies and the Office of Management and Budget on the best way to use existing DOL data for statistical purposes (as defined in section 3561 of title 44 of the United States Code); and

15. comply with any regulation and guidance issued under subchapter III of Chapter 35 of title 44 of the United States Code, including the acquisition and maintenance of any required certification and training.

F. Delegation of CDO Responsibilities

1. In General—To the extent necessary to comply with statistical laws, DOL's CDO shall delegate any responsibility under subsection (E) to the head of a statistical agency or unit (as defined in section 3561 of title 44 of the United States Code) within DOL.

2. Consultation—To the extent permissible under law, the individual to whom a responsibility has been delegated under paragraph (V)(F)(1) shall consult with DOL's CDO in carrying out such responsibility.

3. Deference—DOL's CDO shall defer to the individual to whom a responsibility has been delegated under paragraph (V)(F)(1) regarding the necessary delegation of such responsibility with respect to any data acquired, maintained, or disseminated by DOL under applicable statistical law.

VI. Exceptions; Administrative Matters. The requirements of this Order

are intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other legal authority governing the collection, storage, and management of data. In the event of a conflict, the specific statute, Executive Order, or other legal authority shall govern. The requirements of this Order are in addition to internal administrative procedures regarding the collection, storage, and management of data.

VII. Redlegation of Authority. Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated to serve the purposes of this Order.

VIII. Effective Date. This Order is effective immediately.

Dated: March 12, 2019.

R. Alexander Acosta,
Secretary of Labor.

[FR Doc. 2019-05720 Filed 3-25-19; 8:45 am]

BILLING CODE 4510-04-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19-009)]

Information Collection for TREAT Astronauts Act

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice; amendment of information collection.

SUMMARY: This is an amended version of NASA's earlier **Federal Register** Notice which was published on March 13, 2019, Document 2019-04168, and Notice Number 84 FR 9143 (**SEE SUPPLEMENTARY INFORMATION**). The Office of Chief Health and Medical Officer (OCHMO), within the National Aeronautics and Space Administration (NASA) as part of its continuing effort to reduce public burden and maximize the utility of government information, provides the general public and other Federal agencies the opportunity to comment on an information collection project, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an information collection project titled, "Information Collection for TREAT Astronauts Act." The TREAT Astronauts Act is subsection 441 within the National Aeronautics and Space Administration Transition Authorization Act of 2017 (115th Congress, <https://www.congress.gov/115/plaws/publ10/PLAW-115publ10.pdf>).

The goal is to collect information for routine care, and develop a knowledge base on the effects of spaceflight as well as address gaps in services for medical monitoring, diagnosis and treatment of conditions associated with human space flight.

DATES: All comments should be submitted by April 25, 2019.

ADDRESSES: All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546-0001.

Instructions: All submissions received must include the agency name, if applicable.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the information collection plan and instruments, contact Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546-0001, 202-358-1013.

SUPPLEMENTARY INFORMATION: There was an error in the Title in which

"Information Collection" was added in place of "Electronic Medical Record for Implementation of" and needed to be deleted. There was an error in the second paragraph in which the words "maintain", "digital medical records of", "health", "emergency treatment, and scheduled examination for active or retired astronauts in order to" needed to be deleted. These were respectively replaced with "collect information for," "and," "on the effects of spaceflight as well as," "for," to add more specificity. There was an error in the **ADDRESSES** section in which "Federal eRulemaking Portal: <http://www.Regulations.gov>. Follow the instructions on-line for submitting comments" needed to be deleted. There was an error in the Abstract section, in which "Flight medicine Clinic (FMC)" is added in place of the clinic listed as "Occupational Health Branch (OHB)" and needed to be deleted. There was an error in the Background section, in which "Collection of Information within" is added in place of "management and utilization of" and needed to be deleted. There was an error in the Background section, in which "Collection of Information within" is added in place of "management and utilization of" and needed to be deleted. There was an error in the Background section, in which "collect information from former" is added in place of "create, maintain and securely archive digital medical records and physical examination records of" and needed to be deleted. There was an error in the Background section, in which reference

to records management and associated list of policies needed to be deleted. Instead the following was added in place "This information collection is conducted by clinic staff in compliance with NASA's Health Information Management System (10 HIMS) and NASA's Privacy Act System of Records Notice (SORN), consistent with NASA's privacy and information technology requirements." There was an error in the "Method of Collection" section, in which "forms within the EMR at the JSC, FMC accessible only to authorized staff at the clinic" is added in place of "and paper" and needed to be deleted. There was an error in the Data section's Annual Number of Activities, Average number of Respondents, and Annual Responses in which "175" is added in place of "36,840" and needed to be deleted. There was an error in the Data section's Burden Hours in which "87.5" is added in place of "18,420" and needed to be deleted. There was an error in the Data section, Burden Calculation table, in which "87.5" is added in place of "18,420" and needed to be deleted. There was an error in the Data section, Burden Calculation table, in which "50" is added in place of "25.9" and needed to be deleted. There was an error in the Data section's Total Labor Burden in which "4.375" is added in place of "27,7078" and need to be deleted.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In

addition, the PRA also requires Federal agencies to provide a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

I. Abstract

The project includes standard use of electronic forms within the Electronic Medical Records (EMR) under NASA 10 HIMS regulations at Johnson Space Center (JSC) Flight Medicine Clinic (FMC) by authorized healthcare providers assigned to, employed by, contracted to, or under partnership agreement with the JSC, FMC.

Background and Brief Description

Collection of Information within the EMR at JSC, FMC clinics will be carried out in support of the TREAT Astronaut Act. The approved Public Law 115–10 states:

This law authorizes the National Aeronautics and Space Administration (NASA) to provide for:

- *The medical monitoring and diagnosis of a former United States government astronaut or a former payload specialist for conditions that the Administrator considers potentially associated with human space flight; and*

- *the treatment of a former United States government astronaut or a former payload specialist for conditions that the Administrator considers associated with human space flight, including scientific and medical tests for psychological and medical conditions.*

The FMC clinic staff at JSC will collect information from former Astronauts and payload specialists. This information collection is conducted by clinic staff in compliance with NASA's Health Information Management System (10 HIMS) and NASA's Privacy Act System of Records Notice (SORN), consistent with NASA's privacy and information technology requirements.

II. Method of Collection

Electronic forms within the EMR at the JSC, FMC accessible only to authorized staff at the clinic.

III. Data

Title: Information Collection for TREAT Astronauts Act. (Public Law 115–10)

OMB Number: 2700–xxxx.

Type of Review: New Clearance.

Affected Public: Astronauts and payload specialists.

Average Expected Annual Number of Activities: 175.

Average Number of Respondents per Activity: 175.

Annual Responses: 175.

Frequency of Responses: 1.

Average Minutes Per Response: 0.5 hours.

Burden Hours: 87.5.

BURDEN CALCULATION—ESTIMATION OF RESPONDENT BURDEN HOURS

	Number of respondents	Number of responses per respondent	Number of total responses	Response time	Respondent burden hours
Survey 1	175	1	175	0.50	87.5

BURDEN CALCULATION—LABOR COST OF RESPONDENT BURDEN

	Number of total responses	Response time	Respondent hourly wage	Labor burden per response	Total labor burden
Survey 1	175	0.50	50.0	25	4,375

IV. Requests for Comments

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information will have practical utility;

2. Evaluate the accuracy of NASA'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. Minimize the burden of the collection of information on those who

are to respond, including automated, electronic collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Gatree Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2019-05707 Filed 3-25-19; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974: Systems of Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the National Credit Union Administration (NCUA) gives notice of a new proposed Privacy Act system of records. The new proposed system is the Examination and Supervision System (ESS), NCUA-22. The ESS will be used for NCUA's statutorily mandated examination and supervision activities, including the coordination and conduct of examinations of credit unions, supervisory evaluations and analyses, enforcement actions and Federal court actions. NCUA may coordinate with other financial regulatory agencies on matters related to the safety and soundness of credit unions. This system will track and store examination and supervision documents created during the performance of the NCUA's statutory duties.

DATES: Submit comments on or before April 25, 2019. This action will be effective without further notice on April 25, 2019 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods, but please send comments by one method only:

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

- *NCUA website:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *Email:* Address to regcomments@ncua.gov. Include "[Your name]—Comments on NCUA Examination and Supervision System (ESS), NCUA-22 SORN" in the email subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for email.

- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit

Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Lisa Dolin, Business Innovation Officer, Office of Business Innovation, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314, or Rena Kim, Privacy Attorney, Office of General Counsel, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314.

SUPPLEMENTARY INFORMATION: This notice informs the public of NCUA's proposal to establish and maintain a new system of records. The proposed new system is being established under NCUA's authority in the Federal Credit Union Act, 12 U.S.C. 1751, et. seq. The information collected in the NCUA-22 system of records will also support investigations and supervisory and legal proceedings by the NCUA or other supervisory or law enforcement agencies. The information collected for administrative purposes will ensure quality control, performance, and improving examination and supervision processes. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's systems of records.

The format of NCUA-22 aligns with the guidance set forth in OMB Circular A-108. NCUA-22 and all of NCUA's Standard Routine Uses are published in full below. All of the NCUA's SORNs are available at www.ncua.gov.

By the National Credit Union Administration Board on March 20, 2019.

Gerard Poliquin,

Secretary of the Board.

SYSTEM NAME AND NUMBER:

Examination and Supervision System (ESS)—NCUA-22

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is operated and maintained in part by NCUA staff, and in part by third-party vendors. Please contact the system managers (below) for more information.

SYSTEM MANAGER(S):

Director of the Office of Business Innovation and the Director of the Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1751, et. seq.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of carrying out the NCUA's statutorily mandated examination and supervision activities, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions and actions in Federal court. NCUA may coordinate with other financial regulatory agencies on matters related to the safety and soundness of credit unions. The information collected in this system will also support the conduct of investigations or other supervisory or legal actions by the NCUA or other supervisory or law enforcement agencies. This may result in criminal referrals, referrals to Offices of Inspectors General, or the initiation of administrative or Federal court actions. This system will track and store examination and supervision documents created during the performance of the NCUA's statutory duties. The information also will be used for administrative purposes such as quality control, performance metrics, and improvements to examination and supervision processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are (1) Current and former directors, officers, employees, and agents of credit unions; (2) Current and former members who are or have been serviced by credit unions; (3) Current and former credit union service organization representatives; (4) Other individuals engaged in business with the NCUA for a specific purpose (such as outside counsel); and (5) NCUA employees and contractors, and State Supervisory Authority staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain (1) Contact information about credit union officials (such as members of the Board of Directors, Audit Committee Chair, Chief Executive Officer, Chief Compliance Officer, Internal Auditor, and Independent Auditor), such as name, address, phone number, and email address; (2) Demographic and financial information about individual credit union members, such as name, address, Social Security number, account information, loan and share information, and publicly available information; (3) Information about NCUA employees assigned to credit union examination and supervision tasks, such as name, work phone

number, work email address, and other employment information; (4) User information, such as name, email address, and role about other users of the system (such as contractors, credit union representatives, State Supervisory Authority staff, and Credit Union Service Organization representatives (CUSOs)).

RECORD SOURCE CATEGORIES:

The information in the system about credit union officials and individual credit union members is generally provided by credit unions and CUSOs. NCUA employees and contractors, and State Supervisory Authorities may add additional information to the system as part of their assigned supervision and examination activities (including analytics/business intelligence activities). Some of the information may be from third parties with relevant information about covered persons or service providers, or existing databases maintained by other Federal and state regulatory associations, law enforcement agencies, and related entities. Whenever practicable, the NCUA collects information about an individual directly from that individual.

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, these records or information contained therein may specifically be disclosed outside NCUA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. NCUA's Standard Routine Uses apply to this system of records.
2. To a financial institution affected by enforcement activities or reported criminal activities;
3. To the Internal Revenue Service and appropriate State and local taxing authorities;
4. To another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;
5. To a grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court;
6. To a court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial

proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding related to the NCUA's mission of providing a safe and sound credit union system.

7. To appropriate agencies, entities, and persons, including but not limited to potential expert witnesses, witnesses, or translators, in the course of supervision or enforcement related investigation;

8. To appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license; and

9. To an entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records and backups are stored on dedicated secure servers, approved by NCUA's Office of the Chief Information Officer (OCIO), within a FedRAMP-authorized commercial Cloud Service Provider's (CSP) Infrastructure as a Service (IaaS) hosting environment and accessed only by authorized personnel. No paper files are maintained.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records pertaining to individual credit union members are not generally retrieved outside of a scheduled examination or supervision contact. However, such records can be retrieved by credit union name, charter number, credit union member's name or other record in the system. The system includes advanced search features that function essentially as a full-text search tool.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a NCUA records disposition schedule approved by NARA. Records existing on computer storage media are

destroyed according to the applicable NIST-compliant media sanitization policy.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

NCUA has implemented the appropriate administrative, technical, and physical controls in accordance with the Federal Information Security Modernization Act of 2014, Public Law 113-283, S. 2521, and NCUA's information security policies to protect the confidentiality, integrity, and availability of the information system and the information contained therein. Access is limited to individuals authorized through NIST-compliant Identity, Credential, and Access Management policies and procedures. The records are maintained behind a layered defensive posture consistent with all applicable federal laws and regulations, including OMB Circular A-130 and NIST Special Publications 800-37 and 800-53.

RECORD ACCESS PROCEDURES:

Individuals wishing access to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
 2. Any available information regarding the type of record involved.
 3. A statement specifying the changes to be made in the records and the justification therefore.
 4. The address to which the response should be sent.
 5. You must sign your request.
- Attorneys or other persons acting on behalf of an individual must provide

written authorization from that individual for the representative to act on their behalf.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

HISTORY:

This is a new system.

[FR Doc. 2019-05739 Filed 3-25-19; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974: Systems of Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the National Credit Union Administration (NCUA) gives notice of a new proposed Privacy Act system of records. The new proposed system is the NCUA Connect, NCUA-21. The NCUA Connect system will carry out the NCUA's statutorily mandated credit union examination and supervision activities. Specifically, this system is the interface through which authorized users access NCUA's other major examination, supervision, and reporting related systems.

DATES: Submit comments on or before April 25, 2019. This action will be effective without further notice on April 25, 2019 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods, but please send comments by one method only:

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

- *NCUA Website:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *Email:* Address to regcomments@ncua.gov. Include "[Your name]—Comments on 'NCUA Connect, NCUA-21 SORN'" in the email subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for email.

- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

Director of the Office of Business Innovation, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314, or Rena Kim, Privacy Attorney, Office of General Counsel, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314. Telephone number (703) 548-2398.

SUPPLEMENTARY INFORMATION: This notice informs the public of NCUA's proposal to establish and maintain a new system of records. The proposed new system is being established under NCUA's authority in the Federal Credit Union Act, 12 U.S.C. 1751, *et seq.* The information collected in the NCUA Connect, NCUA-21 system of records is designed to provide a one-stop entry point for internal and external users, which should enhance user experience, while also streamlining security activities. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's systems of records. The format of NCUA Connect, NCUA-21 aligns with the guidance set forth in OMB Circular A-108. NCUA-21 and all of NCUA's Standard Routine Uses are published in full below. All of the NCUA's SORNs are available at www.ncua.gov.

By the National Credit Union Administration Board on March 20, 2019.

Gerard Poliquin,

Secretary of the Board.

SYSTEM NAME AND NUMBER

NCUA Connect, NCUA-21.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is operated and maintained in part by NCUA staff, and in part by third-party vendors. Please contact the system managers (below) for more information.

SYSTEM MANAGER(S):

Director of the Office of Business Innovation, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1751, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of carrying out the NCUA's statutorily mandated examination and supervision activities. Specifically, this system is the interface through which authorized users access NCUA's other major examination, supervision, and reporting related systems. It is designed to provide a one-stop entry point for internal and external users, which should enhance user experience, while also streamlining security activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are (1) Current and former directors, officers, employees, and agents of credit unions; (2) Current and former credit union service organization representatives; (3) Other individuals engaged in business with the NCUA for a specific purpose (such as outside counsel); and (4) NCUA employees and contractors, and State Supervisory Authority staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system contain basic log-in information, including username, password, email address, and role. The system also contains log-in/access records.

RECORD SOURCE CATEGORIES:

The sources of information in the system are the individual users, or someone acting on their behalf (such as an administrator in their organization, or an NCUA employee or contractor).

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, these records or information contained therein may specifically be disclosed outside NCUA

as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. NCUA's Standard Routine Uses apply to this system of records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records and backups are stored on dedicated secure instance, approved by NCUA's Office of the Chief Information Officer (OCIO), within a FedRAMP-authorized commercial Cloud Service Provider's (CSP) Infrastructure as a Service (IaaS) hosting environment and accessed only by authorized personnel. No paper files are maintained.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, username, affiliated organization, email, role, or date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a NCUA records disposition schedule approved by NARA. Records existing on computer storage media are destroyed according to the applicable NIST-compliant media sanitization policy.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

NCUA has implemented the appropriate administrative, technical, and physical controls in accordance with the Federal Information Security Modernization Act of 2014, Public Law 113-283, S. 2521, and NCUA's information security policies to protect the confidentiality, integrity, and availability of the information system and the information contained therein. Access is limited to individuals authorized through NIST-compliant Identity, Credential, and Access Management policies and procedures. The records are maintained behind a layered defensive posture consistent with all applicable federal laws and regulations, including OMB Circular A-130 and NIST Special Publications 800-37.

RECORD ACCESS PROCEDURES:

Individuals wishing access to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.

3. The address to which the record information should be sent.

4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. A statement specifying the changes to be made in the records and the justification therefore.
4. The address to which the response should be sent.
5. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system.

[FR Doc. 2019-05740 Filed 3-25-19; 8:45 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0079]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from February 26, 2019 to March 11, 2019. The last biweekly notice was published on March 12, 2019.

DATES: Comments must be filed by April 25, 2019. A request for a hearing must be filed by May 28, 2019. 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 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-2019-0079. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

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:

Ikeda Betts, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1959, email: Ikeda.Betts@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0079, 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–2019–0079.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

B. Submitting Comments

Please include Docket ID NRC–2019–0079, 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 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.

III. 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 application(s), 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.

Dominion Energy Nuclear Connecticut, Inc., Docket No. 50-336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 17, 2019. A publicly-available version is in ADAMS under Accession No. ML19023A427.

Description of amendment request: The amendment would modify the Millstone Power Station, Unit No. 2, licensing basis by the addition of a license condition to allow for the implementation of the provisions of 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors."

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 will permit the use of a risk-informed categorization process to modify the scope of structures, systems and components (SSCs) subject to special

treatment requirements and to implement alternative treatments per the regulations. The process used to evaluate SSCs for changes to special treatment requirements and the use of alternative requirements ensures the ability of the SSCs to perform their design function. The potential change to special treatment requirements does not change the design and operation of the SSCs. As a result, the proposed change does not significantly affect any initiators to accidents previously evaluated or the ability to mitigate any accidents previously evaluated. The consequences of the accidents previously evaluated are not affected because the mitigation functions performed by the SSCs assumed in the safety analysis are not being modified. The SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition following an accident will continue to perform their design functions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not change the functional requirements, configuration, or method of operation of any SSC. Under the proposed change, no additional plant equipment will be installed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not affect any Safety Limits or operating parameters used to establish the safety margin. The safety margins included in analyses of accidents are not affected by the proposed change. The regulation requires that there be no significant effect on plant risk due to any change to the special treatment requirements for SSCs and that the SSCs continue to be capable of performing their design basis functions, as well as to perform any beyond design basis functions consistent with the categorization process and results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS-2, Richmond, VA 23219.
NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request:

December 13, 2018, as supplemented by letter dated February 14, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML18347B366 and ML19045A011, respectively.

Description of amendment request:

The amendments would modify Technical Specification (TS) requirements to permit the use of risk-informed completion times in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF-505, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b" (ADAMS Accession No. ML18183A493).

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 changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes permit the extension of Completion Times provided the associated risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes do not involve a significant increase in the probability of an accident previously evaluated because the changes involve no change to the plant or its modes of operation. The proposed changes do not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the consequences of an accident during the extended Completion Time are no different from those during the existing Completion Time.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not change the design, configuration, or method of operation of the plant. The proposed changes do not

involve a physical alteration of the plant (no new or different kind of equipment will be installed).

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes permit the extension of Completion Times provided that risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes implement a risk-informed configuration management program to assure that adequate margins of safety are maintained. Application of these new specifications and the configuration management program considers cumulative effects of multiple systems or components being out of service and does so more effectively than the current TS.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request:

December 14, 2018. A publicly-available version is in ADAMS under Accession No. ML18351A006.

Description of amendment request:

The amendment would revise Technical Specification (TS) 6.8.5 "Reactor Building Leakage Rate Testing Program." The amendment would allow for a one-cycle extension to the 10-year frequency of the Three Mile Island Nuclear Station, Unit 1, containment leakage rate test (*i.e.*, Integrated Leakage Rate Test (ILRT) or Type A test). The proposed change would permit the existing ILRT to be extended from 10 years to 11.75 years. This extension would move the performance of the next ILRT from the scheduled fall 2019 refueling outage to the fall 2021 refueling outage.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the Technical Specifications (TS) 6.8.5 involves a one-time extension of the Three Mile Island Nuclear Station, Unit 1 (TMI-1), Type A integrated leakage rate test (ILRT) from 10 years to 11.75 years, in accordance with the Nuclear Regulatory Commission (NRC)-accepted guidelines of Nuclear Energy Institute (NEI) 94-01, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J," Revision 3-A. This change will extend the requirement to perform the Type A ILRT from the current requirement of "prior to startup from the T1R18 refueling outage," to "November 2009 Type A test shall be performed no later than prior to startup from the T1R24 refueling outage in 2021.

The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. Types B and C testing ensures that individual containment isolation valves (CIVs) are essentially leak tight. In addition, aggregate Types B and C leakage rates support the leakage tightness of primary containment by minimizing potential leakage paths. The proposed amendment will not change the leakage rate acceptance requirements. As such, the containment will continue to perform its design function as a barrier to fission product releases. In addition, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident previously evaluated. Therefore, this proposed interval extension does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does 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 accident previously evaluated?

Response: No.

The proposed amendment to the TS involves a one-time extension of the TMI-1 Type A ILRT from 10 years to 11.75 years. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators.

The proposed change does not involve a physical change to the plant (*i.e.*, no new or different type of equipment will be installed)

or a change to the manner in which the plant is operated or controlled. This administrative change to extend the Type A ILRT for TMI-1 will not affect the control parameters governing unit operation or the response of plant equipment to transient or accident conditions.

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.

The proposed amendment to the TS involves the extension of the TMI-1 Type A ILRT interval to 11.75 years. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS 6.8.5, "Reactor Building Leakage Rate Testing Program," for containment leak rate testing exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis are maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves the extension of the interval for only the Type A containment leakage rate test at TMI-1. The proposed surveillance interval extension is bounded by the 15-year Type A test interval currently authorized within NEI 94-01, Revision 3-A. The design, operation, testing methods, and acceptance criteria for Types A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met with the acceptance of this proposed change, since these are not affected by the proposed change to the Type A test interval.

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.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: December 11, 2018. A publicly-available version is in ADAMS under Accession No. ML18348A579.

Description of amendment request: The proposed amendments would modify the Operating Licenses, Appendix B, Environmental Technical Specifications, Part II, "Non-

Radiological Environmental Protection Plan," for CNP, Units 1 and 2. The amendment request would update the Environmental Protection Plan to reflect a Michigan State requirement to obtain and maintain a Renewable Operating Permit for the possession and operation of specified stationary sources of air pollutants and other editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The Environmental Protection Plan (EPP) is concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and has no effect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by obtaining an environmental monitoring permit and reporting required by the EPP. The revision of portions of Appendix B of the Operating Licenses will not impact the design or operation of any plant system or component. No environmental protection requirements established by other federal, state, or local agencies are being reduced by this license amendment request.

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.

Obtaining an environmental monitoring permit and reporting have no effect on accident initiation. The revision to portions of Appendix B of the Operating Licenses will not impact the design or operation of any plant system or component. There will be no impact upon the type or amount of any effluents released from CNP.

Therefore, the proposed changes do not create the possibility of a new or, different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change to add permit and reporting requirements and other administrative revisions has no impact on margin of safety. Environmental evaluations will continue to be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involve no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 4, 2019. A publicly-available version is in ADAMS under Accession No. ML19035A620.

Description of amendment request: The amendments would revise the Salem Technical Specification (TS) requirements on control and shutdown rods and rod and bank position indication, consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF-547, Revision 1, "Clarification of Rod Position Requirements," dated March 4, 2016.

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.

Control and shutdown rods are assumed to insert into the core to shut down the reactor in evaluated accidents. Rod insertion limits ensure that adequate negative reactivity is available to provide the assumed shutdown margin (SDM). Rod alignment and overlap limits maintain an appropriate power distribution and reactivity insertion profile.

Control and shutdown rods are initiators to several accidents previously evaluated, such as rod ejection. The proposed change does not change the limiting conditions for operation for the rods or make any technical changes to the Surveillance Requirements (SRs) governing the rods. Therefore, the proposed change has no significant effect on the probability of any accident previously evaluated.

Revising the TS Actions to provide a limited time to repair rod movement control has no effect on the SDM assumed in the accident analysis as the proposed Actions require verification that SDM is maintained. The effects on power distribution will not cause a significant increase in the consequences of any accident previously evaluated as all TS requirements on power distribution continue to be applicable.

Revising the TS Actions to provide an alternative to frequent use of the moveable incore detector system to verify the position of rods with inoperable rod position indicators does not change the requirement for the rods to be aligned and within the insertion limits.

Therefore, the assumptions used in any accidents previously evaluated are unchanged and there is no significant increase in the consequences.

The consequences of an accident that might occur during the 1 hour period provided for the analog rod position indication to stabilize after rod movement are no different than the consequences of the accident under the existing actions with the rod declared inoperable.

The proposed change to resolve the conflicts in the TS ensure that the intended Actions are followed when equipment is inoperable. Actions taken with inoperable equipment are not assumptions in the accidents previously evaluated and have no significant effect on the consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed). The change does not alter assumptions made in the safety analyses. The proposed change does not alter the limiting conditions for operation for the rods or make any technical changes to the SRs governing the rods. The proposed change to actions maintains or improves safety when equipment is inoperable and does not introduce new failure modes.

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 change to allow time for rod position indication to stabilize after rod movement and to allow an alternative method of verifying rod position has no effect on the safety margin as actual rod position is not affected. The proposed change to provide time to repair rods that are operable but immovable does not result in a significant reduction in the margin of safety because all rods must be verified to be Operable, and all other banks must be within the insertion limits. The remaining proposed changes to make the requirements internally consistent do not affect the margin of safety as the changes do not affect the ability of the rods to perform their specified safety function.

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: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T-5, Newark, NJ 07102.
NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: April 4, 2018. A publicly-available version is in ADAMS under Package Accession No. ML18096A936.

Description of amendment request: The amendments would revise Renewed Facility Operating License Nos. NPF-5 and DPR-57 for the Hatch Nuclear Plant, Units 1 and 2, respectively. The amendments would approve the adoption of a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a), 10 CFR 50.48(c), and the guidance in Regulatory Guide 1.205, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the transition to NFPA 805 [proposed amendment] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of Hatch Nuclear Plant Units 1 and 2 in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been satisfied. The Updated Final Safety Analysis Report documents the analyses of design basis accidents at Hatch Nuclear Plant Units 1 and 2. The proposed amendment does not affect accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility that would increase the probability of accidents previously evaluated. Further, the changes to be made for fire hazard protection and mitigation do not adversely affect the ability of structures, systems, or components to perform their design functions for accident mitigation, nor do they affect the postulated initiators or assumed failure modes for accidents described and evaluated in the Updated Final Safety Analysis Report.

Structures, systems, or components required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Hatch Nuclear Plant Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR 50 Appendix R required fire protection features (69 FR 33536, June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met.

NFPA [805] taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and provides for defense-in-depth. The goals, performance objectives, and performance criteria specified in Chapter 1 of the standard ensure that, if there are any increases in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of the proposed amendment does not increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function(s). The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The applicable radiological dose criteria will continue to be met. Therefore, the consequences of any accident previously evaluated are not increased with the implementation of the proposed amendment.

2. Does the transition to NFPA 805 [proposed amendment] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of Hatch Nuclear Plant Units 1 and 2 in accordance with the proposed amendment does not create the possibility of a new or different kind

of accident from any accident previously evaluated. The proposed change does not alter the requirements or functions for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance [in] Regulatory Guide 1.205 will not result in new or different accidents.

The proposed amendment does not introduce new or different accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of structures, systems, or components to perform their design function. Structures, systems, or components required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Hatch Nuclear Plant Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and appropriate performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR 50, Appendix R required fire protection features (69 FR 33536, June 16, 2004).

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated, with the exception of including requirements for radiological release performance criteria and non-Power Operation fire safety criteria, and alignment with plant down powers below hot shutdown. Based on this, implementation of the proposed amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of the proposed amendment.

3. Does the transition to NFPA 805 [proposed amendment] involve a

significant reduction in a margin of safety?

Response: No.

Operation of Hatch Nuclear Plant Units 1 and 2 in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the Updated Final Safety Analysis Report. The proposed amendment does not adversely affect the ability of structures, systems, or components to perform their design function. Structures, systems, or components required to safely shut down the reactor and to maintain it in a safe shutdown condition, remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Hatch Nuclear Plant Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR 50 Appendix R required fire protection features (69 FR 33536, June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance based requirements of NFPA 805 do not result in a significant reduction in the margin of safety.

The proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits. The risk informed fire protection scenarios and resolutions ensure fire risk analyses are performed and are only successful if adequate safety margin and defense-in-depth is maintained. Therefore, the transition to NFPA 805 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201-1295.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: June 7, 2018. A publicly-available version is in ADAMS under Accession No. ML18158A583.

Description of amendment request: The amendments would revise Renewed Facility Operating License Nos. DPR-57 and NPF-5 for the Hatch Nuclear Plant, Units 1 and 2, respectively, to add a condition to each license allowing for the implementation of the provisions of 10 CFR 50.69, "Risk-informed categorization and treatment of structures, systems and components [(SSCs)] for nuclear power reactors."

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 will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The process used to evaluate SSCs for changes to NRC special treatment requirements and the use of alternative requirements ensures the ability of the SSCs to perform their design function. The potential change to special treatment requirements does not change the design and operation of the SSCs. As a result, the proposed change does not significantly affect any initiators to accidents previously evaluated or the ability to mitigate any accidents previously evaluated. The consequences of the accidents previously evaluated are not affected because the mitigation functions performed by the SSCs assumed in the safety analysis are not being modified. The SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition following an accident will continue to perform their design functions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not change the functional requirements, configuration, or method of operation of any SSC. Under the proposed change, no additional plant equipment will be installed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not affect any Safety Limits or operating parameters used to establish the safety margin. The safety margins included in analyses of accidents are not affected by the proposed change. The regulation requires that there be no significant effect on plant risk due to any change to the special treatment requirements for SSCs and that the SSCs continue to be capable of performing their design basis functions, as well as to perform any beyond design basis functions consistent with the categorization process and results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P. O. Box 1295, Birmingham, AL 35201-1295.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: October 17, 2018. A publicly-available version is

in ADAMS under Accession No. ML18290A940.

Description of amendment request: The amendments would modify the required actions associated with the Hatch Nuclear Plant, Units 1 and 2, Technical Specification (TS) 3.6.4.1, "Secondary Containment," to allow up to 7 days to determine and correct the cause of secondary containment degradation when at least one combination of standby gas treatment (SGT) subsystems can maintain adequate secondary containment vacuum.

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 secondary containment is not an initiator of any accident previously evaluated but is assumed to mitigate some accidents previously evaluated. However, the proposed change does not alter the design or safety function of the secondary containment or associated support systems. Therefore, the probability of an accident previously evaluated is not increased.

The consequences of accidents previously evaluated that assume the secondary containment function in accident mitigation are not altered by the proposed change. The change includes proposed requirements to verify at least one or more Operable SGT subsystems can establish and maintain vacuum within the required time assumed in the safety analysis, thereby conserving the safety analysis assumptions. Therefore, the consequences of any accident that assumes the secondary containment function are not affected by this change.

Consequently, 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 change does not change the design function or operation of the secondary containment function. No plant modifications or changes to the plant configuration or method of operation are involved. The change includes proposed requirements to verify at least one or more Operable SGT subsystems can establish and maintain vacuum within the required time assumed in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect any of the controlling values or parameters used to avoid exceeding regulatory or licensing limits. The proposed change does not exceed or alter the design basis or safety limits, or any limiting safety system settings. The requirement for the secondary containment to perform its designated safety function is unaffected. The proposed change provides additional action requirements similar to action requirements currently provided in the SGT system TS for a similar condition. The risk of providing additional time to restore the leak-tightness of the secondary containment to support any combination of SGT subsystems is offset by the proposed requirements to verify at least one or more Operable SGT subsystems can establish and maintain vacuum within the required time periods. Because the secondary containments for both Units 1 and 2 are interconnected during plant operation, the proposed change also reduces the need for a dual unit shutdown and the associated risk during this condition by allowing more time to identify the degraded components and restore the secondary containments to Operable status. SNC has determined that the acceptability of the allowable outage time for a single SGT subsystem, which was previously evaluated, is also acceptable for the allowable outage time for the secondary containment in the proposed conditions.

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: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P. O. Box 1295, Birmingham, AL 35201-1295.

NRC Branch Chief: Michael T. Markley.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 19, 2018. A publicly-available version is in ADAMS under Accession No. ML18334A106.

Description of amendment request: The amendments would revise Renewed Facility Operating License Nos. NPF-4 and NPF-7 for the North Anna Power Station, Units 1 and 2, respectively, by approving the installation of two non-safety-related water headers (fire protection and domestic water) within the safety-related flood protection dike, along with corresponding changes to the Updated Final Safety Analysis Report (UFSAR).

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 change revises the UFSAR to reflect the addition of non safety-related, underground, fire protection and domestic water system piping within the safety-related flood protection dike west of the Unit 2 Turbine Building. Failure of non safety-related piping within the flood protection dike or failure of the flood protection dike is not an initiator of any accident previously evaluated. The modification does not significantly increase the probability of a failure to the flood protection dike. The technical evaluation for the change shows that slope stability for the flood protection dike is maintained in the event of a non safety-related piping failure. In addition, existing inspections and surveillances are adequate to identify piping leaks or breaks prior to failure of the flood protection dike. In the event a piping break causes a failure of the flood protection dike, a risk review indicates that the probability of this occurring with consequences to be low (not significant).

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change revises the UFSAR to reflect the addition of non safety-related, underground, fire protection and domestic water system piping within the safety-related flood protection dike. The flood protection dike is located west of the Unit 2 Turbine and Service Buildings, and provides flood protection to those buildings if Lake Anna reached the PMF [probable maximum flood] level.

The addition of the non safety-related piping within the flood protection dike does not change the design function or operation of the flood protection dike. A failure of the flood protection dike is not an accident initiator. Failure of the non safety-related piping could potentially degrade the safety-related flood protection dike; however, it does not introduce a new or different kind of accident from any accident previously evaluated.

3. Does proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The change has no significant impact on margins of safety. The installation of the non safety-related piping does not result in a reduction of a peak flood protection dike height. An analysis demonstrated that slope stability is maintained and factors of safety are well within acceptable limits during installation and following installation, including in the event of a pipe break. Therefore, the proposed change does not

involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar Street, RS-2, Richmond, VA 23219.

NRC Branch Chief: Michael T. Markley.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: August 27, 2018.

Brief description of amendments: The amendments revised compensatory measures in the Peach Bottom Atomic Power Station, Units 2 and 3, Technical Requirements Manual to permit operation of the Leading Edge Flow Meter (LEFM) system at three separate intermediate power levels for an indefinite period when the mass flow input to the core thermal power calculation is from one, two, or three feedwater lines in Check mode with none in Fail mode, and to permit operation of the LEFM system at a fourth intermediate power level when not more than one LEFM is in Fail mode and flow measurement is being provided by the associated feedwater flow nozzle. The changes allow operation at power levels commensurate with the uncertainties in the measurement of core thermal power and reduce the magnitude of the required reactivity maneuver and plant power level change for degradation of the LEFM system.

Date of issuance: February 26, 2019.

Effective date: As of the date of issuance and shall be implemented immediately upon issuance.

Amendment Nos.: 324 (Unit 2) and 327 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19039A223; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised Section 3.20 of the Technical Requirements Manual.

Date of initial notice in Federal Register: November 6, 2018 (83 FR 55566).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of amendment request: May 30, 2018, as supplemented by letter dated December 6, 2018.

Brief description of amendments: The amendments revised the Peach Bottom Atomic Power Station, Units 2 and 3,

Technical Specifications to allow continued operation with two safety relief valves/safety valves out of service and to increase the reactor coolant system pressure safety limit.

Specifically, the amendments revised Technical Specification Safety Limit 2.1.2 and Limiting Condition for Operation 3.4.3 for both Units 2 and 3.

Date of issuance: February 26, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 323 (Unit 2) and 326 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19011A325; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: November 6, 2018 (83 FR 55564). The supplemental letter dated December 6, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determined as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 23, 2018.

Brief description of amendments: The amendments modified the Technical Specification requirements for inoperable dynamic restraints (snubbers) by adding a new Limiting Condition for Operation (LCO) 3.0.8. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF 372, Revision 4, "Addition of LCO 3.0.8, Inoperability of Snubbers."

Date of issuance: February 28, 2019.

Effective date: As of the date of issuance and shall be implemented no later than May 31, 2019.

Amendment Nos.: 234 and 197. A publicly-available version is in ADAMS under Accession No. ML19036A913; documents related to these amendments

are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF-39 and NPF-85: The amendments revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: October 23, 2018 (83 FR 53513).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2019.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50-412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of amendment request: March 28, 2018, as supplemented by letter dated October 28, 2018.

Brief description of amendment: The amendment revised various Technical Specification (TS) sections associated with steam generators to allow the use of Westinghouse leak-limiting Alloy 800 sleeves for an additional three fuel cycles of operation, bringing the total usage time from five to eight fuel cycles of operation. The Technical Specification changes also clarified wording in two sections related to use of the leak-limiting Alloy 800 sleeves.

Date of issuance: February 25, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 193. A publicly-available version is in ADAMS under Accession No. ML18348B206; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF-73: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: June 5, 2018 (83 FR 26105). The supplemental letter dated October 28, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated February 25, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50-354, 50-272, and 50-311, Hope Creek Generating Station (Hope Creek) and Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 29, 2018.

Brief description of amendments: The amendments revised Technical Specification requirements in Section 3/4.0, "Applicability," regarding limiting condition for operation and surveillance requirement usage. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF-529, "Clarify Use and Application Rules."

Date of issuance: March 6, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 214 (Hope Creek), 327 (Salem, Unit No. 1), and 308 (Salem, Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML19044A627; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF-57, DPR-70, and DPR-75: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: August 14, 2018 (83 FR 40351).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 2019.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 8, 2018, as supplemented by letter dated February 22, 2019.

Brief description of amendment: The amendment revised the surveillance frequency of Technical Specification 3/4.4.6 Reactor Coolant System Leakage, Surveillance Requirement 4.4.6.2.2 a, to allow the reactor coolant system pressure isolation valve leakage test to be extended to a performance-based frequency not to exceed 3 refueling outages (to a maximum of 60 months) following two consecutive satisfactory tests.

Date of issuance: March 7, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 213. A publicly-available version is in ADAMS under Accession No. ML19023A420, documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF-12: The amendment revised the Renewed Facility Operating License and the Technical Specification.

Date of initial notice in Federal Register: November 20, 2018 (83 FR 58615). The supplemental letter dated February 22, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2019.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station (North Anna), Unit Nos. 1 and 2, Louisa County, Virginia, and Docket Nos. 50-280 and 50-281, Surry Power Station (Surry), Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 16, 2018, as supplemented by letters dated June 13, and September 18, 2018.

Brief description of amendments: The amendments authorized changes to the North Anna and Surry emergency plans and allowed the consolidation of both sites' previous emergency operations facilities into a central emergency operations facility.

Date of issuance: February 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 281 (Unit No. 1) and 264 (Unit No. 2) for North Anna, and 294 (Unit No. 1) and 294 (Unit No. 2) for Surry. A publicly-available version is in ADAMS under Accession No. ML19031B227; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF-4, NPF-7, DPR-32, and DPR-37: The amendments revised the North Anna and Surry emergency plans.

Date of initial notice in Federal Register: September 11, 2018 (83 FR 45981). The supplemental letters dated June 13, and September 18, 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 these amendments is contained in a Safety Evaluation dated February 27, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of March 2019.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019-05266 Filed 3-25-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 25, April 1, 8, 15, 22, 29, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 25, 2019

Thursday, March 28, 2019

9:00 a.m. Transformation at the NRC: Innovation (Public Meeting)
(Contact: June Cai: 301-415-1771)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of April 1, 2019—Tentative

Thursday, April 4, 2019

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Kellee Jamerson: 301-415-7408)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of April 8, 2019—Tentative

There are no meetings scheduled for the week of April 8, 2019.

Week of April 15, 2019—Tentative

There are no meetings scheduled for the week of April 15, 2019.

Week of April 22, 2019—Tentative

Tuesday, April 23, 2019

10:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Materials Users Business Lines (Public Meeting) (Contact: Paul Michalak: 301-415-5804)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of April 29, 2019—Tentative

There are no meetings scheduled for the week of April 29, 2019.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at Denise.McGovern@nrc.gov. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at Kimberly.Meyer-Chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or by email at Wendy.Moore@nrc.gov.

Dated at Rockville, Maryland, this 22nd day of March 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019-05850 Filed 3-22-19; 4:15 pm]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85366; File No. SR-Phlx-2019-04]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New SCAR Routing Option Under Rule 3315

March 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on March 6, 2019, Nasdaq PHLX LLC (“Phlx” 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 a proposal to [sic] adopt a new SCAR routing option under Rule 3315.

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 is proposing to adopt SCAR, a new order routing³ option under Rule 3315(a)(1)(A). The Exchange currently provides a variety of routing

options under Rule 3315(a)(1)(A). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The SCAR routing option would allow members to seek liquidity on the Exchange and the other equity markets operated by Nasdaq, Inc., the Nasdaq BX Equities Market (“BX”) and The Nasdaq Stock Market (“Nasdaq” and together with BX and the Exchange, the “Nasdaq Affiliated Exchanges”). SCAR will operate in the same manner as the current PCRT strategy, but will differ in the initial order routing to the Nasdaq Affiliated Exchanges. Whereas PCRT orders route sequentially to BX, the Exchange, and then to Nasdaq,⁴ SCAR orders will route simultaneously to all three Nasdaq Affiliated Exchanges in accordance with the System routing table.⁵

Specifically as proposed, SCAR would be a routing option under which orders check the System⁶ for available shares and simultaneously route⁷ to BX and Nasdaq in accordance with the System routing table.⁸ Similar to PCRT, if shares remain unexecuted after routing, they are posted on the Exchange’s book or cancelled, depending on the Time-in-Force of the order.⁹ Once on the book, should the order subsequently be locked or crossed

⁴ See Rule 3315(a)(1)(A)(vii).

⁵ The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 3315(a)(1)(A).

⁶ The term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. See Rule 3301(a).

⁷ As with all routing strategies that provide for simultaneous routing, the incoming SCAR order would be broken up into child orders. For SCAR routing, the orders would be sent to the Exchange, Nasdaq, and BX at the same time based on the available displayed interest on these exchanges. In particular, the Exchange would allocate the number of shares from the parent order based on the System routing table for SCAR, and route the allocated shares (*i.e.*, the child orders) to the executing venues simultaneously.

⁸ As is the case today for all market destinations on the System routing table, the placement of the Exchange, BX and Nasdaq on the applicable System routing table for SCAR will depend on the Exchange’s ongoing assessments of factors such as latency, fill rates, reliability, and cost.

⁹ Unexecuted shares of a SCAR order will return to the Exchange after routing and check the System for available shares before cancelling if the order has a Time-in-Force of IOC. Otherwise, shares that remain unexecuted after routing will return to the Exchange and check the System for available shares before posting on the Exchange’s book (*e.g.*, the SCAR order has a Time-in-Force of DAY).

by another market center, the System will not route the order to the locking or crossing market center. This is also similar to how PCRT treats shares that remain unexecuted after completing the initial order route and posting to the Exchange book. Like all of the Exchange’s routing strategies, SCAR is designed to comply with Rule 611 and the other provisions of Regulation NMS.¹⁰

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide prior notice of the implementation date in an Equity Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 the proposed rule change will accomplish those ends by providing market participants with an additional voluntary routing option that will allow them to easily access liquidity available on all Nasdaq Affiliated Exchanges. The Exchange expects the proposed routing strategy will benefit firms that do not employ routing or trading strategies under which the firm itself would rapidly access liquidity provided on the multiple venues. SCAR would not provide any advantage, including latency and priority, to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange.

Lastly, the Exchange notes that routing options enabling the routing of orders between affiliated exchanges is not unique, and that the proposed SCAR routing option is similar to those already offered by the Exchange (*i.e.*, PCRT) and by other exchange groups. Specifically, Cboe BZX Exchange (“BZX”), Cboe BYX Exchange (“BYX”), Cboe EDGA Exchange (“EDGA”), and Cboe EDGX Exchange (“EDGX”) offer a routing option called ALLB that enables an order, whether sent to BZX, BYX, EDGA, or EDGX, to check the BZX, BYX, EDGA, and EDGX books for liquidity before optionally posting on

¹⁰ 17 CFR 242.611.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

³ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by the Exchange, as described in Rule 3315; such an Order may be referred to as a “Routeable Order.” Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on the Exchange in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to the Exchange, where they will (i) again attempt to access liquidity available on the Exchange and (ii) post to the Exchange Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 3301B(f).

the BZX, BYX, EDGA, or EDGX book.¹³ For the foregoing reasons, the Exchange believes that the proposed rule change 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. As discussed above, the proposed functionality is partly based on existing functionality available on competitor exchanges.¹⁴ Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. Lastly, SCAR would not provide any advantage to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange. For the foregoing reasons, the Exchange does not believe 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.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.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 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-2019-04 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-2019-04. 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-2019-04 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05697 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85365; File No. SR-MIAX-2019-12]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503

March 20, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2019, Miami International Securities Exchange, LLC ("MIAX Options" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 503, Openings on

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ See BZX Rule 11.13(b)(3)(O), BYX Rule 11.13(b)(3)(M), EDGA Rule 11.11(g)(7), and EDGX Rule 11.11(g)(7). ALLB is also substantially similar to the Exchange's PCRT strategy, as described above.

¹⁴ *Id.*

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the Exchange, Interpretations and Policies .03.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 12, 2018, the Exchange received approval from the Securities and Exchange Commission ("SEC" or "Commission") to list and trade on the Exchange, options on the SPIKES™ Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, "SPY").³ To facilitate trading options on the Index the Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, Interpretations and Policies .03.

Specifically, the Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, Interpretations and Policies .03, to provide that bona fide Market Maker activity does not constitute either a SPIKES strategy order or a modification to or cancellation of a previously submitted SPIKES strategy order during the "SPIKES Special Settlement Auction."

The SPIKES Index is calculated using only standard options on SPY that expire on the third Friday of each calendar month. Although weekly options on SPY are available, these are not used in the calculation of the Index. To determine the final settlement value

of the Index, the Exchange performs an Index settlement price calculation which includes all SPY options that expire 30 days after the SPIKES settlement that are included in the settlement (these options are referred to in this rule filing as the "constituent options"). In order to perform the Index settlement price calculation, each constituent option is assigned a Settlement Reference Price or "SRP," defined and discussed in more detail below. Each SRP is determined using the SPIKES Special Settlement Auction, which is conducted once per month, in the constituent options traded on the Exchange, on final settlement day. The SPIKES Special Settlement Auction utilizes the Exchange's standard, existing Opening Process, as defined and fully-described in Exchange Rule 503(f), with a modification to account for situations where there remains an order imbalance⁴ that must be filled at the opening price after the requisite number of iterations of the imbalance process takes place under the Exchange's existing Opening Process (the Exchange's existing Opening Process provides that the Exchange can open with an imbalance after the requisite number of iterations of the imbalance process takes place).⁵ This modification to the Exchange's existing Opening Process to facilitate the execution of this remaining must-fill interest is referred to as the special settlement imbalance process ("SSIP"), which is governed by Interpretations and Policies .03 to Exchange Rule 503, as described more fully below. This modified Opening Process functionality, which is accessible to all Members of the Exchange for participation, occurs in highly liquid SPY options (which are simultaneously opening and available for trading on up to 14 other exchanges, thus providing real-time cross-reference prices for the SPY options included in the settlement) is used to conduct the SPIKES Special Settlement Auction to settle expiring SPIKES options.

As discussed more fully below, the Exchange's existing Opening Process runs to completion and precedes the engagement of the new SSIP. The existing Opening Process cannot occur prior to 9:30 a.m. Eastern Time and only begins following the dissemination of a quote or trade in the market for the underlying security.⁶ Following the dissemination of a quote or trade in the

market for the underlying security, the System⁷ pauses for a period of time no longer than one half second to allow the marketplace to absorb this information.⁸ When there is an imbalance,⁹ the System broadcasts a System Imbalance Message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity (*i.e.*, the number of contracts that must be filled in order for that option to open on the Exchange at the indicated price), quantity of routable contracts, and price of the affected series) to subscribers of the Exchange's data feeds and begins an Imbalance Timer¹⁰ not to exceed three seconds.¹¹ Under the existing Opening Process the Exchange may repeat this process up to three times.¹² While the Exchange is conducting its Opening Process, all 14 other option exchanges will also be conducting their opening process for SPY options. As the Exchange works through its process to resolve imbalances under the existing Opening Process, other Exchanges will be open and serve as real-time cross-reference prices for those SPY options, enabling market participants to send orders to the Exchange if there are pricing anomalies for these SPY options across venues. The longer it takes the Exchange to work through the imbalance, the greater the likelihood that other exchanges will have opened their SPY options market and the natural pressures of a competitive market helps to eliminate any pricing anomalies and aid in eliminating the imbalance on the Exchange.

As previously discussed, on the day the settlement value for the Index is calculated, the Exchange conducts the SPIKES Special Settlement Auction, using its standard, existing Opening Process for all options on the Exchange, including the constituent options.¹³ Pursuant to the standard, existing Opening Process, if there are no quotes or orders that lock or cross each other, the System will open by disseminating the Exchange's best bid and offer among quotes and orders that exist in the System at that time. If there are quotes or orders that lock each other, the System will calculate an Expanded

⁷ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁸ The Exchange notes that the current setting is one half second.

⁹ See *supra* note 4.

¹⁰ The Exchange notes that the current Imbalance Timer setting is one second.

¹¹ See Exchange Rule 503(f)(2)(vii).

¹² See Exchange Rule 503(f)(2)(vii)(B)(4).

¹³ For a complete description of the Exchange's standard, existing Opening Process, refer to Exchange Rule 503, Openings on the Exchange.

³ See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIA-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES™ Index).

⁴ An "imbalance" occurs when there is insufficient liquidity to satisfy all trading interest due an execution at a certain price. See Exchange Rule 503(f)(2)(v).

⁵ See Exchange Rule 503(f)(2)(vii)(B)(5).

⁶ See Exchange Rule 503(e)(1).

Quote Range ("EQR"), as described in Rule 503(f)(2). The EQR represents the limits of the range in which transactions may occur during the Opening Process.¹⁴ The EQR is recalculated any time a route timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO¹⁵ price and size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR represents the limits of the range in which transactions may occur during the Opening Process.¹⁶ The System uses the EQR to determine the highest and lowest price of the opening price range.

To calculate the opening price, the System takes into consideration all valid Exchange quotes and all valid orders, together with other exchanges' markets for the series, and identifies the price at which the maximum number of contracts can trade. If that price is within the EQR and leaves no imbalance, the Exchange will open at that price, executing marketable trading interest as long as the opening price includes only Exchange interest.¹⁷ If the calculated opening price included interest other than solely Exchange interest, the System will broadcast a system imbalance message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity, quantity of routable contracts, and price of the affected series) to Exchange Members¹⁸ and initiate a "route timer," not to exceed one second.¹⁹

If all opening and marketable interest cannot be completely executed at or within the EQR without trading at a price inferior to the ABBO, or cannot trade at or within the quality opening market range in the absence of a valid width NBBO,²⁰ the System will automatically institute an imbalance

process.²¹ The System will broadcast a system imbalance message (which includes the symbol, side of the market, quantity of matched contracts, the imbalance quantity, must fill quantity, quantity of routable contracts, and price of the affected series) to subscribers of the Exchange's data feeds, and begin an Imbalance Timer, not to exceed three seconds.²² Market Makers²³ may enter Opening Only ("OPG") eQuotes,²⁴ Auction or Cancel ("AOC") eQuotes,²⁵ Standard quotes,²⁶ Opening Orders ("OPG Orders"),²⁷ AOC Orders²⁸ and limit orders during the Imbalance Timer. Other Exchange Members may enter OPG Orders, AOC Orders and other order types (except those order types not valid during the Opening Process, as described in Rule 516) during the Imbalance Timer.²⁹ If, at the conclusion of the timer, quotes and orders submitted during the Imbalance Timer, or other changes to the ABBO, would not allow the entire imbalance amount to trade at the Exchange at or within the EQR without trading at a price inferior to the ABBO, the System will send a new system imbalance message to Exchange Members and initiate a route timer for routable Public Customer orders not to exceed one second. If, during the route timer, interest is received by the System which would allow all interest to trade on the System (*i.e.*, there is no longer an imbalance) at the opening price without trading at a price inferior to other markets, the System will trade and the route timer will end.³⁰ The System may repeat the imbalance process up to three times (as established by the

Exchange).³¹ Following completion of the third imbalance process, if there is an opening transaction, any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering Member if the price for those contracts crosses the opening price, in effect cancelling that must fill interest.³² That is the completion of the Exchange's standard, existing Opening Process.

Now, where an imbalance exists in constituent options and the final imbalance process has been conducted as part of the Exchange's standard, existing Opening Process, instead of cancelling that must fill interest back to the entering Member, the Exchange conducts the SSIP,³³ where the Exchange will satisfy that must fill interest. The Exchange does not want to cancel any must fill interest, as this liquidity could represent previously hedged interest that must be unwound.

The SSIP is employed to satisfy all liquidity identified as must fill which is creating the imbalance, referred to as the must fill imbalance. The SSIP is an iterative process that is designed to determine a price at which all must fill imbalance interest can be satisfied.³⁴ In the SPIKES Special Settlement Auction, in addition to any order types that may be regularly accepted by the Exchange, the Exchange will also accept settlement auction only orders ("SAO Orders") and settlement auction only eQuotes ("SAO eQuotes") (SAO Orders and SAO eQuotes are collectively referred to as "SAOs") at any time after the opening of the Live Order Window ("LOW")³⁵ and the Live Quote Window ("LQW"),³⁶ respectively. SAOs are specific order types that allow a Member to voluntarily tag such order as a SPIKES strategy order, defined below. All orders for participation in the SPIKES Special Settlement Auction that are related to positions in, or a trading strategy involving, SPIKES Index options ("SPIKES strategy orders"), and any change to or cancellation of any such order: (i) Must be received prior to the applicable SPIKES strategy order cut-off time for the constituent option series, as determined by the Exchange, which may be no earlier than the opening of the LOQ or the LQW, and no later than the opening of trading in the series. The

¹⁴ See Exchange Rule 503(f)(2)(i). See also Exchange Regulatory Circular 2012-02, which sets forth the tables that describe the calculation of the EQR for option classes traded on the Exchange, at http://www.miaxoptions.com/sites/default/files/circular-files/MLAX_Opening_Process_and_Pause_Timer.pdf.

¹⁵ The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

¹⁶ See Exchange Rule 503(f)(2)(i).

¹⁷ See Exchange Rule 503(f)(2)(iv).

¹⁸ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

¹⁹ See Exchange Rule 503(f)(2)(iv)(A).

²⁰ The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²¹ See Exchange Rule 503(f)(2)(vii).

²² See Exchange Rule 503(f)(2)(vii)(A).

²³ The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

²⁴ An opening only or "OPG" eQuote is a quote that can be submitted by a Market Maker only during the Opening as set forth in Rule 503. OPG eQuotes will automatically expire at the end of the Opening Process. See Exchange Rule 517(a)(2)(iii).

²⁵ An Auction or Cancel or "AOC" eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. See Exchange Rule 517(a)(2)(ii).

²⁶ A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any. See Exchange Rule 517(a)(1).

²⁷ An Opening or "OPG" Order is an order that is valid only for the opening process. See Exchange Rule 516(h).

²⁸ An Auction-or-Cancel or "AOC" order is a limit order used to provide liquidity during a specific Exchange process with a time in force that corresponds with that event. See Exchange Rule 516(b)(4).

²⁹ See *supra* note 10.

³⁰ See Exchange Rule 503(f)(2)(vii)(B)(2).

³¹ See Exchange Rule 503(f)(2)(vii)(B)(4).

³² See Exchange Rule 503(f)(2)(vii)(B)(5).

³³ See Exchange Rule 503(f)(2)(vii)(B)(5)(a).

³⁴ See Exchange Rule 503, Interpretations and Policies .03.

³⁵ The Exchange notes that the current Live Order Window opens at 7:30 a.m.

³⁶ The Exchange notes that the current Live Quote Window setting opens at 9:25 a.m., however the Exchange plans to open the Live Quote Window for the SPIKES Special Settlement Auction at 8:30 a.m.

Exchange will announce all determinations regarding changes to the applicable SPIKES strategy order cut-off time via Regulatory Circular at least one day prior to implementation (however the Exchange anticipates initially establishing the cut-off time at 9:20 a.m. Eastern); and (ii) may not be cancelled or modified after the applicable SPIKES strategy order cut-off time, unless the SPIKES strategy order is not executed in the SPIKES Special Settlement Auction and the cancellation or modification is submitted after the SPIKES Special Settlement Auction is concluded (provided that any such SPIKES strategy order may be modified or cancelled after the applicable SPIKES strategy order cut-off time and prior to the applicable non-SPIKES strategy order cut-off time in order to correct a legitimate error, in which case the Member submitting the change or cancellation will prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and will file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange considers orders to be SPIKES strategy orders for purposes of Rule 503 Interpretation and Policy .03, if the orders possess the following three characteristics: (A) Are for options with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract; (B) are for options spanning the full range of strike prices for the appropriate expiration for options that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract, but not necessarily every available strike price; and (C) are for put options with strike prices less than the “at-the-money” strike price and for call options with strike prices greater than the “at-the-money” strike price. They may also be for put and call options with “at-the-money” strike prices.

Whether certain orders are SPIKES strategy orders for purposes of Interpretation and Policy .03 depends upon specific facts and circumstances. The Exchange may also deem order types other than those provided above as SPIKES strategy orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

These requirements are substantially similar to Cboe’s requirements for

“strategy orders” participating in the VIX settlement auction.³⁷

Market participants that actively trade SPIKES options may hedge their positions with SPY option series that will also be used to calculate the SPIKES exercise settlement/final settlement value. Market participants holding hedged SPIKES options positions may trade out of their SPY option series on the relevant SPIKES expiration/final settlement date. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. In order to seek convergence with the SPIKES exercise/final settlement value, these market participants may liquidate their hedges by submitting SPIKES strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction on the SPIKES expiration/final settlement date.

The SPIKES strategy order cut-off time exists because trades to liquidate hedges can contribute to an order imbalance during the SPIKES Special Settlement Auction in SPY option series on expiration/final settlement dates. For example, traders liquidating hedges could predominantly be on one side of the market and those market participants’ orders may create buy or sell order imbalances during the SPIKES Special Settlement Auction in SPY option series on expiration/final settlement dates. As a result of having a SPIKES strategy order cut-off time in place, the Exchange has created a defined window to encourage participation in the SPIKES Special Settlement Auction among market participants who may wish to place off-setting orders against imbalances to which SPIKES strategy orders may have contributed. Additionally, by precluding the modification or cancellation of SPIKES strategy orders from occurring after the cut-off time, the Exchange is ensuring that the order book reflects bona-fide interest for execution, and is a feature designed to prevent manipulation of the final settlement price.

Next, to begin the SSIP, which occurs during the SPIKES Special Settlement Auction and is done to resolve imbalances, the System broadcasts a system imbalance message to all subscribers of the Exchange’s relevant

data feed and begins an SSIP Imbalance Timer, the duration of which shall be determined by the Exchange, not to exceed ten seconds, and shall be communicated via Regulatory Circular. During the SSIP Imbalance Timer, the System accepts all quote and order types supported during the standard Opening Process. Next, the System evaluates the must fill imbalance and adjusts the EQR by a defined amount by appending to the EQR (adding to offers or subtracting from bids) the EQR value (as determined by the Exchange and communicated via Regulatory Circular).³⁸ During the SSIP, the allowable EQR is increased .5 times the EQR value upon each iteration of the SSIP. The SSIP is repeated until a price is reached at which there is no remaining must fill imbalance.

Once there is no remaining must fill imbalance, SAOs, AOC Orders, AOC eQuotes, OPG Orders, and OPG eQuotes submitted into the SPIKES Special Settlement Auction are cancelled. Any unfilled day limit orders and GTC orders that are priced at the Opening Price are placed on the Book and managed by the System.

As previously discussed, the System assigns an SRP to each constituent option to facilitate the calculation of the final settlement price of the Index. If the System opens the constituent option with a trade, the System assigns the constituent option an SRP equal to the trade price in that option. If there is no locking or crossing interest and the System opens the constituent option without a trade, and the bid-ask spread is at or within a range as defined by the Exchange in an SRP opening width table and communicated via Regulatory Circular, the System assigns the constituent option an SRP equal to the midpoint of the bid and ask prices. If the bid-ask spread is not within a range as defined in the SRP opening width table, the System conducts an additional process to determine the SRP of the constituent option, as follows.

First, the System starts a settlement reference price timer (“SRPT”) (the duration of which shall be defined by the Exchange not to exceed sixty seconds and shall be communicated via Regulatory Circular). If, during the SRPT, there is a trade on the Exchange, the System will set the SRP equal to the trade price. If, during the SRPT, the bid-ask spread changes so that it is within a range defined in the settlement price opening width table, the System will set the SRP equal to the midpoint of the bid and ask price.

³⁷ See Cboe Rule 6.2, Hybrid Opening (and Sometimes Closing) System (“HOSS”), Interpretations and Policies .01, Modified Opening Procedure for Series Used to Calculate the Exercise/Final Settlement Values of Volatility Indexes.

³⁸ See *supra* note 14.

If the SRPT expires, the System will set the SRP equal to the Reference Price (the current price of that option utilizing the cash index calculation formula, described above) of the constituent option if it is equal to or inside the MBBO.³⁹ If the Reference Price is non-zero and less than the Exchange's bid, then the System will set the SRP equal to the Exchange's bid. If the Reference Price is non-zero and greater than the Exchange's ask, then the System will set the SRP equal to the Exchange's ask. If the Reference Price is zero and if one or both adjacent constituent options have a non-zero SRP, the constituent option will be excluded from the calculation. If the Reference Price is zero and there are multiple adjacent constituent options with a current Reference Price of zero, the System will use the midpoint of the NBBO for the SRP if the NBBO bid-ask spread is at or within a range defined in the settlement price opening width table. If the NBBO bid-ask spread is not within a range defined in the settlement price opening width table, the System will wait for either a trade, or a bid-ask spread that is within a range defined in the settlement price opening width table. Once all constituent options have been assigned an SRP, the System performs the final settlement price calculation of the Index.

In the options market, it is important for Market Makers to provide liquidity to execute against orders submitted by other market participants. Pursuant to Rule 603, a Market Maker has general obligations to, among other things, engage (to a reasonable degree under existing circumstances) in dealings for the Market Maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for an option (*i.e.*, an imbalance), to compete with other Market Makers to improve markets in its appointed classes, and to update market quotations in response to changed market conditions in its appointed classes. Certain types of Market Makers have obligations to facilitate resolution of imbalances and make competitive markets, and the proposed rule change is consistent with those obligations.⁴⁰ As described above, the entry of SPIKES strategy orders may lead to order imbalances in the option series used to determine the final settlement value for expiring SPIKES Index options. In order

for the Exchange's system to open these series for trading (*i.e.*, to resolve order imbalances) and achieve the most competitive pricing in these series, Market Maker participation in the SPIKES Special Settlement Auction is important for adding liquidity and promoting a fair and orderly opening and settlement process.

The Exchange understands that some Market Makers may hesitate to provide liquidity that could resolve order imbalances, out of a concern that adding such liquidity after the SPIKES strategy order cut-off time could be deemed either a new SPIKES strategy order or a modification to or cancellation of an existing SPIKES strategy order. As a result, this perceived risk may lead to reduced liquidity and may exacerbate the time it takes to open a series at a competitive price.⁴¹ The proposed rule change encourages Market Makers to provide liquidity on SPIKES Index options settlement days by explicitly stating in Rule 503, Interpretations and Policies .03, that bona fide Market Maker activity does not constitute either a SPIKES strategy order or a modification to or cancellation of a previously submitted SPIKES strategy order during the SPIKES Special Settlement Auction. The Exchange believes Market Maker liquidity is important to the resolution of order imbalances on SPIKES Index settlement days and to the orderly opening of series on such day, due to the fact that a series cannot open if there is a market order imbalance. Also, Market Maker liquidity is desirable to advance the opening of series at competitive prices on SPIKES Index settlement days. The Exchange's system also relies on Market Maker liquidity to open series for trading. Pursuant to Rule 503, the Exchange's system will not open a series for trading if there are no Market Maker quotes present. Additionally, the width of the best Market Maker quotes on the Exchange must be within a certain price range for the System to open a series for trading. The Exchange believes the proposed rule change will incentivize Market Maker liquidity on SPIKES Index settlement days by explicitly stating in the Rules that providing such liquidity will not be deemed to constitute either submission of a SPIKES strategy order or modification or cancellation of a previously submitted SPIKES strategy order.

Specifically, proposed Rule 503, Interpretations and Policies .03(e) states a Market Maker with an appointment in a class with constituent option series may submit bids and offers in those

series for bona fide market making purposes in accordance with Rule 603 and the Securities Exchange Act of 1934 (the "Act"), for its market maker account prior to the open of trading for participation in the SPIKES Special Settlement Auction. The Exchange will deem these bids and offers to be non-SPIKES strategy orders, and will not deem them to be changes to or cancellations of previously submitted SPIKES strategy orders, if:

(i) The Member with which the Market Maker is affiliated has established, maintains, and enforces reasonably designed written policies and procedures (including information barriers, as applicable), taking into consideration the nature of the Member's business and other facts and circumstances, to prevent the misuse of material nonpublic information (including the submission of SPIKES strategy orders); and

(ii) when submitting these bids and offers, the Market Maker has no actual knowledge of any previously submitted SPIKES strategy orders.

In other words, if a Market Maker submits bids or offers in constituent options on a SPIKES Index option settlement day, and if such bids and offers are for its market maker account and submitted for purposes of its market making activities on the Exchange (including in accordance with Market Maker obligations, such as to offset imbalances or provide competitive pricing), the Market Maker may submit those bids and offers any time prior to the open of trading, including both before and after the strategy order cut-off time. As long as the Member has appropriate procedures in place both to prevent the Market Maker from knowing about the submission of SPIKES strategy orders by other persons within the Member organization with which it is affiliated, and to prevent other persons from knowing about the Market Maker's submission of bids and offers, the Exchange will not review such bids and offers for either potential impermissible entry of SPIKES strategy orders, or cancellations of or modifications to previously submitted SPIKES strategy orders.

Bona fide Market Maker activity is generally activity consistent with Market Maker requirements under the Act and MIAX Options Rules:

- Pursuant to the Act, a market maker is a specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and

³⁹ The term "MBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

⁴⁰ See, e.g., Rules 603 and 604 (describing the obligations of Primary Lead Market Makers and Lead Market Makers).

⁴¹ See Rules 503(f).

sell such security for his own account on a regular or continuous basis.⁴²

- Pursuant to Rule 603, a Market Maker appointed to a class must, among other things, engage to a reasonable degree under existing circumstances in dealings for the Market Maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for an option (*i.e.*, an imbalance), to compete with other Market Makers to improve markets in its appointed classes, and to update market quotations in response to changed market conditions in its appointed classes. Additionally, pursuant to Rule 603, all quotes a Market Maker submits, including prior to the opening, must comply with all requirements including applicable bid-ask differential and minimum size requirements.⁴³ Rule 604 imposes an ongoing continuous quoting requirement on Market Makers that applies through the opening of trading, as well as during regular trading hours.

- In addition to these obligations, Market Makers also effect transactions for the purpose of hedging, reducing risk of, rebalancing, or liquidating their open positions.

As noted above, the Exchange implemented the SPIKES strategy order cut-off time for the operational purpose of providing market participants with time to enter additional orders and quotes to offset any such imbalances prior to the opening of these series.⁴⁴ The Exchange's surveillance procedures to determine market participants' compliance with the SPIKES strategy order cut-off time are separate and distinct from the Exchange's surveillance procedures to identify potentially manipulative behavior. Therefore, from the Exchange's perspective, whether a Market Maker's bids and offers constitute SPIKES strategy orders is distinct from whether the submitting Market Maker is attempting to engage in manipulative behavior. The classification of bona fide Market Maker activity as non-SPIKES strategy orders will have no impact on the Exchange's surveillance procedures to detect activity intended to manipulate the settlement value or violate other Rules. Additionally, all

Market Maker bids and offers, even though not considered SPIKES strategy orders pursuant to the proposed rule change, will continue to be subject to Exchange surveillance procedures that monitor trading in the option series used to calculate SPIKES Index settlement values on expiration dates, as well as surveillance procedures that monitor Market Maker activity for compliance with Market Maker obligations in the Rules. This activity will merely be excepted from Exchange surveillance procedures determining compliance with the operational SPIKES strategy order cut-off time.

The Exchange believes Market Makers are more likely to interact with and resolve order imbalances on SPIKES settlement days if they can be confident that their bids and offers submitted for that purpose will not be deemed SPIKES strategy orders or cancellations of or modifications to previously submitted SPIKES strategy orders. As discussed above, the purpose of the SPIKES strategy order cut-off time is to provide market participants, including Market Makers, with sufficient time to address imbalances created by SPIKES strategy orders. Additionally, as discussed above, pursuant to Rule 503(f), whether a series opens depends on the presence of Market Maker quotes at prices no wider than an acceptable price range. Market Makers are an important source of liquidity on the Exchange, and also have various obligations with which they must comply. The proposed rule change will provide a Market Maker with an opportunity to provide liquidity on SPIKES Index settlement dates and to satisfy their Market Maker obligations, without concern that the Exchange may consider such activity to constitute the placing of, or cancellations to or modifications of, SPIKES strategy orders, even if the Member with which the Market Maker is affiliated submitted a SPIKES strategy order.

The purpose of this proposed change is to accommodate the fact that the Member with which the Market Maker is affiliated may submit a SPIKES strategy order while the Market Maker may also be submitting bids and offers to accommodate a fair and orderly opening process, by among other things, resolving market order imbalances and submitting competitively priced bids and offers.

For example, a Member may have a SPY Market Maker and a separate volatility trading desk. During the SPIKES Special Settlement Auction on a SPIKES Index settlement day, the trading strategy of the SPY Market Maker is to provide markets in SPY

options (both before and after the SPIKES strategy order cut-off time), and the trading strategy of the volatility trading desk may be to replicate Vega exposure by replacing its expiring SPIKES options positions with positions in the SPY constituent series. To replicate its Vega exposure, the volatility trading desk may enter SPIKES strategy orders prior to the SPIKES strategy order cut-off time. These are separate and distinct trading strategies. If the Member has reasonable policies and procedures in place such that the SPY Market Maker has no knowledge of the volatility trading desk's submission of SPIKES strategy orders, and that the volatility trader has no knowledge of the SPY Market Maker's submission of bids and offers, the Exchange believes it is appropriate for the SPY Market Maker's bids and offers to not be deemed SPIKES strategy orders, or the modification to or cancellation of the SPIKES strategy order submitted by its affiliated volatility trading desk.

The Exchange does not believe it is necessary to restrict the bona fide market making activities of a Market Maker within its appointed classes due to other unrelated trading activities that may involve submissions of orders deemed to be SPIKES strategy orders of which the Market Maker has no actual knowledge. The proposed rule change expressly provides that activity related to a Market Maker's market making activity in an appointed class will not constitute the submission of a SPIKES strategy order or the cancellation of or modification to a previously submitted SPIKES strategy order.

The proposed rule change makes clear that a Market Maker's submission of bids and offers for bona fide market making purposes in constituent series is permitted on SPIKES Index settlement days through the open of trading in the same manner as it is permitted in all series in its appointed classes at all other times. This will encourage Market Makers to continue to submit bids and offers through the open, despite other trading activity within the Member organization. This will also ensure Market Makers can respond to imbalances and update their quotes⁴⁵ in accordance with their market making dealings and obligations. The Exchange believes this will contribute to price transparency and liquidity in the option series at the open, and thus will promote a fair and orderly opening on SPIKES Index settlement days. The

⁴² 15 U.S.C. 78c(a)(38); *see also* 12 U.S.C. 1851(d)(1)(B) (market making is intended to service "the reasonably expected near-term demand" of other parties).

⁴³ Rule 603(b)(4) permits the Exchange to set different minimum quote size and bid-ask differential requirements for opening quotes as those for intraday quotes.

⁴⁴ *See* Exchange Rule 503, Interpretations and Policies .03.

⁴⁵ As noted above, the Exchange's system will not open a series if there is no quote of if the opening quote or price is outside an acceptable price range.

Exchange continuously evaluates the SPIKES Special Settlement Auction to identify potential enhancements, and intends to modify the procedure as it deems appropriate to contribute to a fair and orderly opening process. A fair and orderly opening in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change would not eliminate a Market Maker's requirements to abide by Exchange Rules 301 (Just and Equitable Principles of Trade), 318 (Manipulation), and 303 (Prevention of the Misuse of Material Nonpublic Information). The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures reasonably designed to ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders is consistent with requirements of Rule 303. The Exchange will continue to conduct surveillance to monitor trading in the option series used to calculate the SPIKES Index settlement values on expiration dates, including but not limited to, monitoring entry of SPIKES strategy orders, or modifications to SPIKES strategy orders, following the cut-off time, as well as compliance with other Rules.

The proposed rule change also makes a non-substantive change to change paragraph numbering resulting from the addition of this proposed rule.

Additionally, the proposed rule changes modifies Interpretations and Policies .03(c) to Rule 503, to state that "SPIKES strategy orders" means all orders for participation in the SPIKES Special Settlement Auction that are related to positions in, or a trading strategy involving, expiring SPIKES Index options. The addition of the word "expiring" is a codification of the Exchange's interpretation of the term SPIKES strategy order. As discussed above, to replicate expiring SPIKES Index options on their expiration dates with options portfolios, market participants generally submit SPIKES strategy orders to participate in the SPIKES Special Settlement Auction on SPIKES Index settlement days. The addition of the word "expiring" is consistent with the introductory paragraph in Interpretations and Policies .03 to Rule 503, which states that the SPIKES Special Settlement Auction applies to series used to calculate the exercise/final settlement value of the SPIKES Index for expiring options contracts, and demonstrates the rule is meant to refer to orders that relate to strategies involving expiring

SPIKES Index options. Therefore, the proposed codification is consistent with this general practice, as well as the current rule.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁴⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed change will increase liquidity on SPIKES Index settlement dates, as it will remove an impediment that may discourage Market Makers from submitting bids and offers to offset imbalances and update the prices of their quotes in response to changing market conditions prior to the open. The Exchange believes this additional liquidity may contribute to a fair and orderly opening by increasing execution opportunities, reducing imbalances in constituent options, and increasing the presence of quotes within the acceptable price range, which would benefit all market participants who trade in the SPIKES Index options and the constituent options. The Exchange does not believe it is necessary to restrict the bona fide market maker activities of a Market Maker due to other unrelated trading activity by the Member with which it is affiliated. The Exchange notes that the proposed rule change would not impact a Market Maker's requirements to abide by Exchange Rules 301 (Just and Equitable Principles of Trade), 318 (Manipulation), and 303 (Prevention of the Misuse of Material Nonpublic Information). The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures reasonably designed to

ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders is consistent with requirements of Rule 303. As a result, the Exchange does not believe that the proposed rule change will be burdensome on Market Makers.

The Exchange believes the proposed rule change will contribute to price transparency and liquidity in the option series at the open, and thus a fair and orderly opening on SPIKES Index settlement days. A fair and orderly opening in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change to add the term "expiring" to the definition of SPIKES strategy order is merely a codification of a current Exchange interpretation and is consistent with the definition of constituent options in the current rule.

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. Because of the importance of Market Maker liquidity in the options market and the Exchange's need for competitive quotes to open a series, the Exchange believes it is appropriate for Market Makers' bids and offers prior to the opening of trading, including after the SPIKES strategy order cut-off time, not to be considered SPIKES strategy orders, or cancellations to or modifications of previously submitted SPIKES strategy orders. As discussed above, Market Makers are subject to various obligations under the Rules, and the proposed rule change provides them with the ability to satisfy these obligations without the risk of their market making activity being deemed to constitute SPIKES strategy orders or modifications to or cancellations of SPIKES strategy orders. The requirement in the proposed rule change that the Member with which a Market Maker is affiliated must establish, maintain, and enforce policies and procedures is reasonably designed to ensure the Market Maker will not have knowledge of the submission of SPIKES strategy orders and is consistent with the requirements of Rule 303. As a result, the Exchange does not believe the proposed rule change will be burdensome on Market Makers. The Exchange does not believe it is necessary to restrict the bona fide market maker activities of a Member due to its other unrelated trading activities. The proposed rule change has

⁴⁶ 15 U.S.C. 78f(b).

⁴⁷ 15 U.S.C. 78f(b)(5).

no impact on intermarket competition, as it applies to orders and quotes submitted to the SPIKES Special Settlement Auction the Exchange conducts prior to the open of trading in certain classes.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will contribute to price transparency and liquidity in constituent options at the open on SPIKES Index settlement days, and thus to a fair and orderly opening on those days. A fair and orderly opening, and increased liquidity in these series benefits all market participants who trade in the SPIKES Index options and the constituent options.

The proposed rule change to add the term “expiring” to the definition of SPIKES strategy orders has no impact on competition, as it is merely a codification of a current Exchange interpretation and is consistent with the definition of constituent options in the current rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁴⁸ and Rule 19b-4(f)(6)⁴⁹ 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-MIAX-2019-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2019-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-12 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85374; File No. SR-NYSE-2018-54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Sections 312.03 and 312.04 of the Listed Company Manual To Amend the Price Requirements for Certain Exceptions From the Shareholder Approval Rules

March 20, 2019.

I. Introduction

On December 3, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Sections 312.03 and 312.04 of the NYSE Listed Company Manual (“Manual”) to modify the price requirements that companies must meet to avail themselves of certain exceptions from the shareholder approval requirements set forth in Section 312.03. The proposed rule change was published for comment in the **Federal Register** on December 20, 2018.³ On January 30, 2019, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated March 20, 2019, as the date by which it should either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Sections 312.03 and 312.04 of the Manual to modify the price requirements that companies must meet

⁴⁸ 15 U.S.C. 78s(b)(3)(A).

⁴⁹ 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.

⁵⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84821 (Dec. 14, 2018), 83 FR 65378 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85005 (Jan. 30, 2019), 84 FR 1812 (Feb. 5, 2019).

to avail themselves of certain exceptions from the shareholder approval requirements set forth in Section 312.03.

Currently, under Section 312.03(b), the Exchange requires a NYSE-listed company to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company (each a “Related Party”); a subsidiary, affiliate or other closely-related person of a Related Party; or any company or entity in which a Related Party has a substantial direct or indirect interest, if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance (“Related Party Transaction”).⁶ However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder (“Substantial Security Holder Transaction”), and if the issuance relates to a sale of stock for cash at a price at least as great as each of the book and market value of the issuer’s common stock, then shareholder approval would not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.⁷

In addition, under Section 312.03(c), the Exchange currently requires a NYSE-listed company to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if: (1) The common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock or; (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for

common stock (“20% Issuance”). However, shareholder approval would not be required for any 20% Issuance involving any bona fide private financing,⁸ if such financing involves a sale of common stock, for cash, at a price at least as great as each of the book and market value of the issuer’s common stock or the sale of securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as each of the book and market value of the issuer’s common stock.⁹

“Market value” of the issuer’s common stock is defined in Section 312.04(i), for purposes of shareholder approval required under Section 312.03, as the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the entering into of a binding agreement to issue the securities.¹⁰ The current rule provides that, for example, if the transaction is entered into after the close of the regular session at 4:00 p.m. Eastern Standard Time on a Tuesday, then Tuesday’s official closing price is used. If the transaction is entered into at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday’s official closing price is used.¹¹ The current rule also states that an average price over a period of time is not acceptable as “market value” for purposes of Section 312.03.¹²

The Exchange has proposed a new measure of market value for purposes of Section 312.03, to be known as the “Minimum Price,” which will be defined as a price that is the lower of (1) the Official Closing Price immediately preceding the signing of the binding agreement to issue the securities or (2) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement to issue the securities.¹³ The Exchange has proposed to define “Official Closing Price” of the

issuer’s common stock as the official closing price on the Exchange as reported to the Consolidated Tape¹⁴ immediately preceding the signing of a binding agreement to issue the securities.¹⁵ This definition is based on the current definition of “Market Value” in Section 312.04(i), which currently uses the official closing price as reported to the Consolidated Tape in its definition, with certain changes.¹⁶ Under the proposal, the exceptions to the shareholder approval requirements set forth in Sections 312.03(b) and (c) described above¹⁷ will only be available for issuances that are priced at least as great as the Minimum Price. In addition, while the new definition of “Official Closing Price” would retain the example in the current definition of “Market Value,” the Exchange proposed to delete the statement that an average price over a period of time is not acceptable as “market value” for purposes of Section 312.03.¹⁸ The Exchange stated that this statement will no longer be accurate upon approval of the proposed rule change.¹⁹

In proposing to use a five-day average closing price to determine if a shareholder vote is required under Sections 312.03(b) and (c), the Exchange stated that it is a widespread practice in commercial transactions involving the issuance of securities to use a five-day average when pricing transactions to avoid unanticipated and inequitable results that may occur with use of a single day’s closing price if there is unexpected price volatility.²⁰ While the Exchange noted that there are potential negative consequences to using a five-day average as the sole measure of whether shareholder approval is required,²¹ the Exchange stated that it believes that the risks of using the five-day average closing price are already accepted by the market, as evidenced by

¹⁴ The Exchange states that the manner in which the official closing price as reported to the Consolidated Tape is determined is set forth in NYSE Rule 123C(1)(e). See Notice, *supra* note 3, at 65379 n.6.

¹⁵ See proposed Section 312.04(j) of the Manual. The Exchange proposes to renumber existing subsections (j) and (k) as subsections (k) and (l), respectively. See proposed Section 312.04(j)–(l) of the Manual.

¹⁶ See *supra* notes 10–12 and accompanying text. The new definition of “Official Closing Price” would replace all references to “entering into” agreements and/or transactions with “signing” agreements and/or transactions. The Exchange stated in its proposal that this change would conform the language used throughout the rule and does not have any substantive effect. See Notice, *supra* note 3, at 65379 n.7.

¹⁷ See *supra* notes 7–9 and accompanying text.

¹⁸ See proposed Section 312.04(j) of the Manual.

¹⁹ See Notice, *supra* note 3, at 65379.

²⁰ See *id.*

²¹ See *id.*

⁸ “Bona fide private financing” is defined as a sale in which either a registered broker-dealer purchases the securities from the issuer with a view to the private sale of such securities to one or more purchasers; or the issuer sells the securities to multiple purchasers, and not one such purchaser, or group of related purchasers, acquires, or has the right to acquire upon exercise or conversion of the securities, more than five percent of the shares of the issuer’s common stock or more than five percent of the issuer’s voting power before the sale. See Section 312.04(g) of the Manual.

⁹ See Section 312.03(c) of the Manual. Shareholder approval is also not required for any 20% Issuance involving any public offering for cash. See *id.*

¹⁰ See Section 312.04(i) of the Manual.

¹¹ See *id.*

¹² See *id.*

¹³ See proposed Section 312.04(i) of the Manual.

⁶ See Section 312.03(b) of the Manual.

⁷ See *id.*

the use of an average price in transactions that do not require shareholder approval, such as those transactions where less than 20% of the outstanding shares are being issued.²² Thus, the Exchange proposed to define market value as the lower of the most recent closing price or five-day average closing price.²³

In conjunction with its proposal to redefine market value for purposes of determining whether an exception to the shareholder approval requirements of Sections 312.03(b) and (c) is available, the Exchange has also proposed to eliminate the current requirement that the price paid in a Substantial Security Holder Transaction or 20% Issuance qualifying for such exceptions must not be less than book value. Currently, as noted above, the Exchange's rules provide exceptions to the shareholder approval requirements in Sections 312.03(b) and (c) for certain sales of common stock for cash at a price at least as great as market and book value. Under the proposal, Substantial Security Holder Transactions and 20% Issuances that otherwise qualify for the exceptions to the shareholder approval requirements in Sections 312.03(b) and (c) and are priced below book value but at or above market value, as defined by the Minimum Price, would no longer require shareholder approval. In its proposal, the Exchange stated that book value is an accounting measure that is based on the historic cost of assets rather than their current value, and that it believes it is not a meaningful measure of whether a transaction is dilutive or should otherwise require shareholder approval.²⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices including safeguarding the interests of shareholders with respect to certain potentially dilutive transactions.²⁷

As discussed above, the proposal would, among other things, (i) change the definition of market value, for purposes of determining whether exceptions to the shareholder approval requirements under Sections 312.03(b) and (c) are met, by proposing to use the lower of the official closing price or five-day average closing price and, as a result, also remove the prohibition on an average price over a period of time being used as a measure of market value for purposes of Section 312.03; and (ii) eliminate the requirement for shareholder approval under Sections 312.03(b) and (c) at a price that is less than book value but at least as great as market value. The Commission has carefully considered the proposal and finds that the proposed rule change is consistent with the Act.

²⁷ See, e.g., Securities Exchange Act Release Nos. 84287 (Sept. 26, 2018), 83 FR 49599 (Oct. 2, 2018) (SR-NASDAQ-2018-008) (approving amendments to change the definition of market value for purposes of the shareholder approval rule and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value); 76814 (Dec. 31, 2015), 81 FR 0820 (Jan. 7, 2016) (SR-NYSE-2015-02) (approving amendments to the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval in certain circumstances); 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (SR-NYSE-2002-46 and SR-NASD-2002-140) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); and 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008) (File No. 10-182) (order approving registration of BATS Exchange, Inc. noting that qualitative listing requirements including shareholder approval rules are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

The Commission believes that the proposed change to the determination of market value (proposed to be defined as "Minimum Price"), to use the lower of the official closing price or five-day average closing price, for determining whether certain exceptions to the shareholder approval provisions apply to Substantial Security Holder Transactions in Section 312.03(b) and to 20% Issuances in Section 312.03(c), is consistent with the Act.²⁸ The Commission notes that, according to the Exchange, the five-day period for establishing the average closing price is related to the way transactions are actually structured, in situations where shareholder approval is not required, to help smooth out price fluctuations.²⁹

The Commission believes that the proposal to eliminate the requirement for shareholder approval under Sections 312.03(b) and (c) at a price that is less than book value but at least as great as market value is also consistent with the Act. As noted by the Exchange,³⁰ book value may not be an appropriate indicator of whether a transaction is dilutive for purposes of the Exchange's shareholder approval rule.

The Commission notes, in approving the changes to measure market value as the lower of the closing price and five-day average closing price and eliminate the book value requirement, that the ability of listed companies to issue securities without shareholder approval continues to remain limited by other important Exchange rules.³¹ For

²⁸ See *infra* notes 31–35 and accompanying text for a discussion of other circumstances that may require shareholder approval.

²⁹ See Notice, *supra* note 3, at 65380. As noted above, the rule proposal would also remove an explicit provision in the Exchange's rules that states that an average price over a period of time is not acceptable as market value for purposes of the shareholder approval rules. The removal of this prohibition is necessary in order for the Exchange to adopt the same five-day average pricing period that Nasdaq currently uses in its shareholder approval rules. See *infra* note 36. In approving the removal of this prohibition, the Commission notes it is only doing so after finding that the five-day average pricing period is consistent with the Act. The deletion of the prohibition is not meant to imply any other period of time to calculate average pricing would be consistent with the Act, and any proposal to do so would have to be analyzed on its own merits pursuant to a proposed rule change under Section 19(b) of the Act.

³⁰ See Notice, *supra* note 3, at 65379.

³¹ See, e.g., Sections 312.03(a) and (d) of the Manual. The Commission notes that, under Exchange rules, if shareholder approval is not required under the requirements in Sections 312.03(b) or (c) it could still be required under one of the other shareholder approval provisions in Section 312.03 of the Manual since these provisions apply independently of each other. See Section 312.04(a) of the Manual ("Shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78f(b)(5).

example, the Commission notes that any discounted issuance of stock to a company's employees, directors, or other service providers would require shareholder approval under the Exchange's equity compensation rules.³² In addition, shareholder approval would continue to be required if the issuance resulted in a change of control,³³ as well as for certain issuances to Related Parties, such as officers, directors and their affiliates, among others.³⁴ Finally, as discussed above, Sections 312.03(b) and (c) set forth circumstances under which shareholder approval would be required, and such approval would continue to be required under the proposal to the extent that an issuance would not qualify for the exceptions enumerated in those rules.³⁵

The Commission further notes, in approving the changes to measure market value as the lower of the closing price and five-day average closing price and eliminate the book value requirement, that the proposed amendments are similar to the rules of another national securities exchange that the Commission found consistent with the Act.³⁶

The Commission believes that the additional proposed amendments and clarifications to the rule, including to the definition of official closing price, will add transparency to the Exchange's rules and are therefore consistent with the Act.³⁷

under one or more of the other subparagraphs."'). The Commission notes that the independent application of these provisions includes the provisions on shareholder approval for equity compensation plans as set forth in Section 303A.08, as referenced in Section 312.03(a) of the Manual.

³² See Sections 312.03(a) and 303A.08 of the Manual. The Commission notes that Section 303A.08 uses the term "fair market value" for purposes of determining whether an issuance of stock would qualify for an exception from the shareholder approval requirement in Section 303A.08. The Exchange has represented that for purposes of qualifying for that exception, the Exchange has always interpreted fair market value as identical to the Official Closing Price definition proposed to be adopted in Section 312.04, and, to avoid any potential confusion, the Exchange will submit a proposed rule filing to amend Section 303A.08 to codify this interpretation. See Notice, *supra* note 3, at 65379–80. For any avoidance of doubt, the Commission notes that the term Minimum Price, as defined above by the Exchange in its current proposal, is not applicable to the equity compensation provisions in Section 303A.08 or Section 312.03(a).

³³ See Section 312.03(d) of the Manual.

³⁴ See Section 312.03(b) of the Manual.

³⁵ See *supra* notes 6–9 and accompanying text.

³⁶ See Securities Exchange Act Release No. 84287 (Sept. 26, 2018), 83 FR 49599 (Oct. 2, 2018) (SR–NASDAQ–2018–008). See also NASDAQ Rule 5635(d).

³⁷ The Commission notes that the Exchange has indicated that the changes to the definition of Official Closing Price were made to conform the

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR–NYSE–2018–54), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85372; File No. SR–NASDAQ–2019–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New SCAR Routing Option

March 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b–4 thereunder,² notice is hereby given that on March 6, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new SCAR routing option under Rule 4758.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

definition to the language used throughout the rule and does not have any substantive effect. See *supra* note 16.

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 is proposing to adopt SCAR, a new order routing³ option under Rule 4758(a)(1)(A). The Exchange currently provides a variety of routing options under Rule 4758(a)(1)(A). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The SCAR routing option would allow members to seek liquidity on the Exchange and the other equity markets operated by Nasdaq, Inc., the Nasdaq BX Equities Market ("BX") and Nasdaq PSX ("PSX" and together with BX and the Exchange, the "Nasdaq Affiliated Exchanges"). SCAR will operate in the same manner as the current CART strategy, but will differ in the initial order routing to the Nasdaq Affiliated Exchanges. Whereas CART orders route sequentially to BX, PSX and then check the System,⁴ SCAR orders will route simultaneously to all three Nasdaq Affiliated Exchanges in accordance with the System routing table.⁵

³ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a "Routable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

⁴ See Rule 4758(a)(1)(A)(xi).

⁵ The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 4758(a)(1)(A).

Specifically as proposed, SCAR would be a routing option under which orders check the System⁶ for available shares and simultaneously route⁷ to BX and PSX in accordance with the System routing table.⁸ Similar to CART, if shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled, depending on the Time-in-Force of the order.⁹ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. This is also similar to how CART treats shares that remain unexecuted after completing the initial order route and posting to the Exchange book. Like all of the Exchange's routing strategies, SCAR is designed to comply with Rule 611 and the other provisions of Regulation NMS.¹⁰

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide prior notice of the implementation date in an Equity Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 the proposed rule change will accomplish those ends by providing market participants with an additional voluntary routing option that will allow them to easily access liquidity available on all Nasdaq Affiliated Exchanges. The Exchange expects the proposed routing strategy will benefit firms that do not employ routing or trading strategies under which the firm itself would rapidly access liquidity provided on the multiple venues. SCAR would not provide any advantage, including latency and priority, to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange.

Lastly, the Exchange notes that routing options enabling the routing of orders between affiliated exchanges is not unique, and that the proposed SCAR routing option is similar to those already offered by the Exchange (*i.e.*, CART) and by other exchange groups. Specifically, Cboe BZX Exchange ("BZX"), Cboe BYX Exchange ("BYX"), Cboe EDGA Exchange ("EDGA"), and Cboe EDGX Exchange ("EDGX") offer a routing option called ALLB that enables an order, whether sent to BZX, BYX, EDGA, or EDGX, to check the BZX, BYX, EDGA, and EDGX books for liquidity before optionally posting on the BZX, BYX, EDGA, or EDGX book.¹³ For the foregoing reasons, the Exchange believes that the proposed rule change 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. As discussed above, the proposed functionality is partly based on existing functionality available on competitor exchanges.¹⁴ Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to

the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. Lastly, SCAR would not provide any advantage to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange. For the foregoing reasons, the Exchange does not believe 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.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.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 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁶ The term "System" shall mean the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC. See Rule 4701(a).

⁷ As with all routing strategies that provide for simultaneous routing, the incoming SCAR order would be broken up into child orders. For SCAR routing, the orders would be sent to the Exchange, BX, and PSX at the same time based on the available displayed interest on these exchanges. In particular, the Exchange would allocate the number of shares from the parent order based on the System routing table for SCAR, and route the allocated shares (*i.e.*, the child orders) to the executing venues simultaneously.

⁸ As is the case today for all market destinations on the System routing table, the placement of the Exchange, BX and PSX on the applicable System routing table for SCAR will depend on the Exchange's ongoing assessments of factors such as latency, fill rates, reliability, and cost.

⁹ Unexecuted shares of a SCAR order will return to the Exchange after routing and check the System for available shares before cancelling if the order has a Time-in-Force of IOC. Otherwise, shares that remain unexecuted after routing will return to the Exchange and check the System for available shares before posting on the Exchange's book (*e.g.*, the SCAR order has a Time-in-Force of DAY).

¹⁰ 17 CFR 242.611.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See BZX Rule 11.13(b)(3)(O), BYX Rule 11.13(b)(3)(M), EDGA Rule 11.11(g)(7), and EDGX Rule 11.11(g)(7). ALLB is also substantially similar to the Exchange's CART strategy, as described above.

¹⁴ *Id.*

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2019-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-013 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-05702 Filed 3-25-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85376; File No. SR-PEARL-2019-09]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

March 20, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 8, 2019, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) make a number of non-substantive, technical corrections to its routing fee table set

forth in Section 1(b) of the Fee Schedule to reflect the recent addition of a new national securities exchange, MIAX Emerald, LLC ("MIAX Emerald"),³ to be listed in the routing fee table; (ii) change the exchange groupings of options exchanges within the routing fee table and to adjust the fee for certain groupings, to reflect the associated fee for customer orders that are routed to those options exchanges for execution; and (iii) make a non-substantive, technical formatting correction.

Addition of MIAX Emerald

MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act⁴ on March 1, 2019. The names of all options exchanges are set forth in the Exchange's routing fee table set forth in Section 1(b) of the Fee Schedule, which sets forth the fees for customer orders that are routed to those options exchanges for execution. Accordingly, the Exchange proposes to update its routing fee table set forth in Section 1(b) of the Fee Schedule to reflect the addition of MIAX Emerald as a national securities exchange. The amount of the applicable fee is determined based upon (i) the origin type of the order, (ii) whether or not it is an order for an option in a Penny or Non-Penny class (or other explicitly identified classes) and (iii) to which away market it is being routed.⁵ The Exchange proposes to add MIAX Emerald to the second "Routed, Priority Customer," Penny Pilot" exchange grouping, the second "Routed, Priority Customer, Non-Penny Pilot" exchange grouping, the "Routed, Public Customer that is not a Priority Customer, Penny Pilot" exchange grouping, and the second "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping. In determining its Routing Fees, the Exchange takes into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the

³ See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

⁴ 15 U.S.C. 78f.

⁵ This is similar to the methodologies utilized by BATS in assessing Routing Fees. See Cboe BZX Options Fee Schedule under "Fee Codes and Associated Fees."

⁶ "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretations and Policies .01.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange's clearing costs,⁷ administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. Based on its analysis, the Exchange determined that the exchange groupings discussed above were the similar grouping within which to include MIAX Emerald.

Updated Grouping of Certain Options Exchanges and Fees

The Exchange proposes to change the exchange groupings of options exchanges within the routing fee table and to adjust the fee for certain groupings, to better reflect the associated costs of routing customer orders to those options exchanges for execution. As noted above, the Exchange assesses the applicable routing fee based upon (i) the origin type of the order, (ii) whether or not it is an order for an option in a Penny or Non-Penny class (or other explicitly identified classes) and (iii) to which away market it is being routed.⁸ In determining which category to group an exchange into, the Exchange primarily takes into account the amount of the transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative costs, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule.

Cboe BZX Options Exchange ("BZX Options") has exchange groupings in its fee schedule, similar to those of MIAX PEARL, whereby several exchanges are grouped into the same category, dependent on the order's origin type and whether it is a Penny or Non-Penny Pilot class.⁹ The Exchange believes having these types of exchange groupings allows it greater precision in covering its costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange.

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to change the exchange grouping of options exchanges within the routing fee table and to adjust the fee for certain groupings, to better reflect the associated costs of routing customer orders to those options exchanges for execution. First, the Exchange proposes to add MIAX Options, Cboe, Nasdaq PHLX, Nasdaq ISE, and Cboe EDGX Options to the first "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping, and to increase the fee for this exchange grouping from \$0.65 to \$1.00. Next, the Exchange proposes to add NOM and BOX to the second "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping, and to decrease the fee for this exchange grouping from \$1.20 to \$1.15. The Exchange also proposes to remove NYSE Arca Options, Cboe BZX Options, and Nasdaq GEMX from this exchange grouping. Next, the Exchange proposes to add Cboe BZX Options, NYSE Arca Options, and Nasdaq GEMX to the third "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping, and to increase the fee for this exchange grouping from \$0.97 to \$1.25. The Exchange also proposes to remove BOX, Cboe, Cboe EDGX Options, Nasdaq ISE, MIAX Options, NOM and Nasdaq PHLX from this exchange grouping. The Exchange notes that no options exchanges were removed from the routing fee table entirely, and were only categorized within a different exchange grouping. Finally, the Exchange proposes to increase the fee for the second "Routed, Priority Customer, Non-Penny Pilot" exchange grouping from \$0.97 to \$1.00. The Exchange does not propose to adjust the fee it charges for the first or second "Routed, Priority Customer, Penny Pilot" exchange groupings; the first "Routed, Priority Customer, Non-Penny Pilot" exchange grouping; and the "Routed, Public Customer that is not a Priority Customer, Penny Pilot" exchange grouping. All of the foregoing changes to the groupings and the amounts are based on corresponding changes to the fee amounts assessed by the away exchanges since the last time the Exchange changed its Routing Fees.

Formatting Corrections

The Exchange also proposes to make a number of non-substantive, technical

formatting corrections. Specifically, the Exchange notes that the current routing fee table incorrectly lists MIAX Options with all capitalized letters. The Exchange proposes to correct "MIAX OPTIONS" as currently written in the first "Routed, Priority Customer, Penny Pilot" exchange grouping, the first "Routed, Priority Customer, Non-Penny Pilot" exchange grouping, and the "Routed, Public Customer that is not a Priority Customer, Penny Pilot" exchange grouping to now be written as "MIAX Options," with the word "options" only having the first letter capitalized. The Exchange notes that the word "Options" was inadvertently capitalized and believes that correcting the formatting of the word would make the routing table clearer, and would align the formatting with the rest of the Fee Schedule. The Exchange also proposes to make a correction in the third "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping. Specifically, the Exchange proposes to remove the parenthesis around the words "Public Customer that is not a Priority Customer." The Exchange notes that the parenthesis were inadvertently added and believes that removing the parenthesis would make the routing fee table clearer, as it would align the formatting with the other exchange groupings in the table. Lastly, the Exchange proposes to amend the title of Section 1(b) of the Fee Schedule to remove the words "and Rebate" from the title. The Exchange notes that the title of the Section currently reads "Fees and Rebates for Customer Orders Routed to Another Options Exchange." The routing fee table does not currently contain any rebates, therefore, as amended, the Exchange proposes for the title of the Section to now read "Fees for Customer Orders Routed to Another Options Exchange." The Exchange believes this will add clarity and precision with respect to the structure of its Fee Schedule. The Exchange notes that none of the proposed technical corrections change the application of routing fee table in any way.

Accordingly, as amended, the routing fee table shall be as follows:

(b) Fees for Customer Orders Routed to Another Options Exchange

MIAX PEARL will assess a Routing Fee to market participants on all orders routed to and executed on an away market as set forth in the table below.

⁷ The OCC amended its clearing fee from \$0.01 per contract side to \$0.02 per contract side. See Securities Exchange Act Release No. 71769 (March

21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05).

⁸ See *supra* note 5.

⁹ See *supra* note 5.

Description	Fees
Routed, Priority Customer, Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq MRX, MIAX Options, Nasdaq PHLX (except SPY), Nasdaq BX Options	\$0.15
Routed, Priority Customer, Penny Pilot, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald	0.65
Routed, Priority Customer, Non-Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq ISE, Nasdaq MRX, MIAX Options, Nasdaq PHLX, Nasdaq BX Options	0.15
Routed, Priority Customer, Non-Penny Pilot, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, NOM, MIAX Emerald	1.00
Routed, Public Customer that is not a Priority Customer, Penny Pilot, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX Emerald, MIAX Options, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: NYSE American, MIAX Options, Cboe, Nasdaq PHLX, Nasdaq ISE, Cboe EDGX Options	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: Cboe C2, NOM, BOX, Nasdaq MRX, Nasdaq BX Options, MIAX Emerald	1.15
Routed Public Customer that is not a Priority Customer, Non-Penny Pilot, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX ...	1.25

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹² in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes to update its routing fee table set forth in Section 1(b) of the Fee Schedule to reflect the addition of MIAX Emerald as a national securities exchange furthers the objectives of Section 6(b)(4) of the Act and are equitable and reasonable and not unfairly discriminatory because the addition of MIAX Emerald to the routing fee table would apply in the same manner to all Members that are subject to the Routing Fee. The Exchange believes the proposed changes are equitable and reasonable since they make non-substantive, technical corrections and updates to the Exchange's Fee Schedule. The addition of MIAX Emerald to the routing fee table does not alter the application of any Routing Fees, but instead adds MIAX Emerald to the appropriate exchange groupings in the routing fee table to reflect that MIAX Emerald has been

added as a national securities exchange. The Exchange believes that the proposed changes to update its routing fee table to reflect the addition of MIAX Emerald as a national securities exchange furthers the objectives of Section 6(b)(5) of the Act and promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table and to adjustments to the fee for certain groupings, to reflect the associated fee for customer orders that are routed to those options exchanges for execution further the objectives of Section 6(b)(4) of the Act and are reasonable, equitable and not unfairly discriminatory because they will continue to apply in the same manner to all Members that are subject to Routing Fees. The Exchange believes the proposed changes to the routing fee table exchange grouping and fees also further the objectives of Section 6(b)(5) of the Act and are designed to promote just and equitable principles of trade and are not unfairly discriminatory because they seek to recoup costs that are incurred by the Exchange when routing customer orders to away markets on behalf of Members and in the same manner to all Members that are subject to the Routing Fee. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical

costs. The Exchange believes that the proposed re-categorization of certain exchange groupings and adjustments to fees would enable the Exchange to recover the costs it incurs to route orders to away markets. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to re-categorize certain exchange groupings and make adjustments to the associated fees because all such changes are based on corresponding changes to the fee amounts assessed by the away exchanges since the last time the Exchange changed its Routing Fees.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower routing fees to Priority Customer orders than to Public Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Further, the routing fees for Priority Customer orders are based on the fees charged by the away market for the execution of such orders, therefore it is reasonable and appropriate for the routing fees to be lower than the routing fees for Public Customer orders, as this is the fee construct at the away markets.

Lastly, the Exchange believes that the proposed non-substantive, technical formatting corrections further the objectives of Section 6(b)(4) of the Act and 6(b)(5) of the Act in that the changes are equitable and reasonable and not unfairly discriminatory because this proposal is intended only as a technical correction to the formatting of certain names within the routing fee

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(1) and (b)(5).

table and to update to the title of Section 1(b) of the Fee Schedule to accurately reflect that this Section only includes fees, which does not have any substantive impact on the Routing Fees. The Exchange believes making these technical formatting corrections promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because it would eliminate any potential confusion as a result of incorrect formatting and wording. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to update its routing fee table set forth in Section 1(b) of the Fee Schedule to reflect the addition of MIAX Emerald as a new national securities exchange will have no impact on competition as they are not designed to address any competitive issues but rather are designed to make non-substantive technical corrections and update the Exchange's Fee Schedule by adding MIAX Emerald to the appropriate exchange groupings in the routing fee table to reflect that MIAX Emerald has been added as a national securities exchange. The Exchange's proposed re-categorization of certain exchange groupings and adjustment of fees is intended to enable the Exchange to recover the costs it incurs to route orders to away markets. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and other Exchange have similar Routing Fee structures.¹³ Further, the Exchange does not believe that the technical formatting corrections to the routing fee table will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal is intended to eliminate any potential confusion as a result of incorrect formatting and wording. In doing so, the proposed rule change will also serve to promote clarity and consistency in the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2019-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-PEARL-2019-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2019-09 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05705 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85368; File No. SR-BX-2019-004]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New SCAR Routing Option Under Rule 4758

March 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 6, 2019, 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.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹³ See *supra* note 5.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to [sic] adopt a new SCAR routing option under Rule 4758.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt SCAR, a new order routing³ option under Rule 4758(a)(1)(A). The Exchange currently provides a variety of routing options under Rule 4758(a)(1)(A). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The SCAR routing option would allow members to seek liquidity on the Exchange and the other equity markets operated by Nasdaq, Inc., The Nasdaq Stock Market

(“Nasdaq”) and Nasdaq PSX (“PSX” and together with Nasdaq and the Exchange, the “Nasdaq Affiliated Exchanges”). SCAR will operate in the same manner as the current BCRT strategy, but will differ in the initial order routing to the Nasdaq Affiliated Exchanges. Whereas BCRT orders check the Exchange for available shares and then route to PSX and Nasdaq sequentially,⁴ SCAR orders will route simultaneously to all three Nasdaq Affiliated Exchanges in accordance with the System routing table.⁵

Specifically as proposed, SCAR would be a routing option under which orders check the System⁶ for available shares and simultaneously route⁷ to Nasdaq and PSX in accordance with the System routing table.⁸ Similar to BCRT, if shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled, depending on the Time-in-Force of the order.⁹ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. This is also similar to how BCRT treats shares that remain unexecuted after completing the initial order route and posting to the Exchange book. Like all of the Exchange's routing strategies, SCAR is designed to comply with Rule 611 and

the other provisions of Regulation NMS.¹⁰

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide prior notice of the implementation date in an Equity Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 the proposed rule change will accomplish those ends by providing market participants with an additional voluntary routing option that will allow them to easily access liquidity available on all Nasdaq Affiliated Exchanges. The Exchange expects the proposed routing strategy will benefit firms that do not employ routing or trading strategies under which the firm itself would rapidly access liquidity provided on the multiple venues. SCAR would not provide any advantage, including latency and priority, to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange.

Lastly, the Exchange notes that routing options enabling the routing of orders between affiliated exchanges is not unique, and that the proposed SCAR routing option is similar to those already offered by the Exchange (*i.e.*, BCRT) and by other exchange groups. Specifically, Cboe BZX Exchange (“BZX”), Cboe BYX Exchange (“BYX”), Cboe EDGA Exchange (“EDGA”), and Cboe EDGX Exchange (“EDGX”) offer a routing option called ALLB that enables an order, whether sent to BZX, BYX, EDGA, or EDGX, to check the BZX, BYX, EDGA, and EDGX books for liquidity before optionally posting on the BZX, BYX, EDGA, or EDGX book.¹³ For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the Act.

⁴ See Rule 4758(a)(1)(A)(vii).

⁵ The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 4758(a)(1)(A).

⁶ The term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. See Rule 4701(a).

⁷ As with all routing strategies that provide for simultaneous routing, the incoming SCAR order would be broken up into child orders. For SCAR routing, the orders would be sent to the Exchange, Nasdaq, and PSX at the same time based on the available displayed interest on these exchanges. In particular, the Exchange would allocate the number of shares from the parent order based on the System routing table for SCAR, and route the allocated shares (*i.e.*, the child orders) to the executing venues simultaneously.

⁸ As is the case today for all market destinations on the System routing table, the placement of the Exchange, Nasdaq and PSX on the applicable System routing table for SCAR will depend on the Exchange's ongoing assessments of factors such as latency, fill rates, reliability, and cost.

⁹ Unexecuted shares of a SCAR order will return to the Exchange after routing and check the System for available shares before cancelling if the order has a Time-in-Force of IOC. Otherwise, shares that remain unexecuted after routing will return to the Exchange and check the System for available shares before posting on the Exchange's book (*e.g.*, the SCAR order has a Time-in-Force of DAY).

¹⁰ 17 CFR 242.611.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See BZX Rule 11.13(b)(3)(O), BYX Rule 11.13(b)(3)(M), EDGA Rule 11.11(g)(7), and EDGX Rule 11.11(g)(7). ALLB is also substantially similar to the Exchange's BCRT strategy, as described above.

³ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by the Exchange, as described in Rule 4758; such an Order may be referred to as a “Routeable Order.” Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on the Exchange in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to the Exchange, where they will (i) again attempt to access liquidity available on the Exchange and (ii) post to the Exchange Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

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. As discussed above, the proposed functionality is partly based on existing functionality available on competitor exchanges.¹⁴ Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. Lastly, SCAR would not provide any advantage to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange. For the foregoing reasons, the Exchange does not believe 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.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.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 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-2019-004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2019-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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-BX-2019-004 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-05699 Filed 3-25-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85370; File No. SR-CboeBZX-2019-017]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To List and Trade Shares of the iShares iBonds Dec 2026 Term Muni Bond ETF, iShares iBonds Dec 2027 Term Muni Bond ETF, and iShares iBonds Dec 2028 Term Muni Bond ETF Under BZX Rule 14.11(c)(4)

March 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 19, 2019, Cboe BZX Exchange, Inc. ("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 filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under BZX Rule 14.11(c)(4) the shares of the iShares iBonds Dec 2026

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Term Muni Bond ETF (the “2026 Fund”), iShares iBonds Dec 2027 Term Muni Bond ETF (the “2027 Fund”), and iShares iBonds Dec 2028 Term Muni Bond ETF (the “2028 Fund”, each a “Fund” and, collectively, the “Funds”) of iShares Trust (the “Trust”).

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Funds under BZX Rule 14.11(c)(4),⁵ which governs the listing and trading of index fund shares based on fixed income securities indexes.⁶ The Shares will be

⁵ The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS–2011–018).

⁶ The Exchange notes that the Commission has already published an immediately effective rule filing allowing the listing and trading of shares of a series of Index Fund Shares very similar to the Funds on the Exchange. See Securities Exchange Act Release No. 84107 (September 13, 2018), 83 FR 47210 (September 18, 2018) (SR–CboeBZX–2018–070) (the “2025 Filing”). Further, the Commission has also approved a proposed rule change allowing the listing and trading of shares of two series of Index Fund Shares very similar to the Funds on the Exchange. See Securities Exchange Act Release No. 79381 (November 22, 2016), 81 FR 86044 (November 29, 2016) (SR–BatsBZX–2016–48) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 Thereto, To List and Trade Shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF of the iShares U.S. ETF Trust Pursuant to BZX Rule 14.11(c)(4)) (the “Approval Order”). Finally, the Commission has also published an immediately effective rule filing allowing the listing and trading of shares of the 2026 Fund on NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 84396 (October

offered by the Trust, which was established as a Delaware statutory trust on December 16, 1999. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (“Registration Statement”) with the Commission.⁷

Rule 14.11(c)(4)(B)(i)(b) requires that component fixed income securities that, in the aggregate, account for at least 75% of the weight of the index or portfolio shall have a minimum principal amount outstanding of \$100 million or more. The Exchange submits this proposal because the Underlying Indexes, as defined below, do not meet this requirement. The Underlying Indexes do, however, meet all of the other requirements of Rule 14.11(c)(4).

Description of the Shares and the Funds

BlackRock Fund Advisors (“BFA”) is the investment adviser to the Funds.⁸ State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. S&P is the index provider (the “Index Provider”) for the Funds. BlackRock Investments, LLC serves as the distributor for the Trust.

S&P AMT-Free Municipal Callable Factor Adjusted 2026 Series Index

According to the Registration Statement, the 2026 Fund will seek to track the investment results, before fees and expenses, of the S&P AMT-Free Municipal Callable Factor Adjusted 2026 Series Index (the “2026 Underlying Index”), which measures the performance of investment-grade (as determined by Index Provider), non-callable and callable U.S. municipal

10, 2018), 83 FR 52266 (October 16, 2018) (SR–NYSEArca–2018–70) (the “Arca Filing”). While the Arca Filing was published and would have allowed the listing and trading of shares of the 2026 Fund on NYSE Arca, the shares of the 2026 Fund have not been listed or traded. In addition to proposing to list and trade the Shares of each Fund on the Exchange, this proposal would change the underlying index associated with the 2026 Fund, as described in the Arca Filing, from the S&P AMT-Free Municipal Series Dec 2026 Index to the S&P AMT-Free Municipal Callable Factor Adjusted 2026 Series Index, which would expand the index universe to include certain callable securities, as described below.

⁷ See Registration Statement on Form N–1A for the Trust, dated January 11, 2019 (File Nos. 333–92935 and 811–09729). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 27661 (January 17, 2007) (File No. 812–13208).

⁸ BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

bonds which will mature or be redeemed prior to December 1, 2026. The 2026 Underlying Index includes only municipal bonds from issuers that are state, local or federal district governments or agencies such that the interest on each such bond is exempt from U.S. federal income taxes and the federal alternative minimum tax (“AMT”) (“Municipal Securities”).

As of December 31, 2018, the 2026 Underlying Index included 12,222 component fixed income municipal bond securities from issuers in 51 different states or U.S. territories.⁹ The most heavily weighted security in the 2026 Underlying Index represented approximately 0.41% of the total weight of the 2026 Underlying Index and the aggregate weight of the top five most heavily weighted securities in the 2026 Underlying Index represented less than 1.33% of the total weight of the 2026 Underlying Index. Approximately 6.76% of the weight of the components in the 2026 Underlying Index had a minimum original principal outstanding of \$100 million or more and 76.02% of the weight of the components were a constituent of an offering where the original offering amount was at least \$100 million. In addition, the total dollar amount outstanding of issues in the 2026 Underlying Index was approximately \$101,777,956,000 and the average dollar amount outstanding of issues in the 2026 Underlying Index was approximately \$8,327,000.

Requirement for Index Constituents

Each bond in the 2026 Underlying Index must be denominated in U.S. dollars and must have a minimum par amount of \$2 million. To remain in the 2026 Underlying Index, bonds must maintain a minimum par amount greater than or equal to \$2 million as of the next rebalancing date. The 2026 Underlying Index includes Municipal Securities that have a rating of at least BBB– by S&P Global Ratings, Baa3 by Moody’s Investors Service, Inc., or BBB by Fitch Ratings, Inc. A bond must be rated by at least one of these three rating agencies in order to qualify for the 2026 Underlying Index, and the lowest rating will be used in determining if the bond is investment-grade. All non-callable bonds in the 2026 Underlying Index will mature after December 31, 2025 and before December 2, 2026. Callable bonds are eligible subject to the following: (i) A final maturity date after December 31, 2025 and before December 2, 2026, and a next call date no sooner than two

⁹ Unless otherwise noted, all statistics related to the 2026 Underlying Index presented hereafter were accurate as of December 31, 2018.

years prior to final maturity; or (ii) a final maturity up to four years after the index maturity year, if the next call date is within the index maturity range. The 2026 Underlying Index will also contain at least 500 component securities.

S&P AMT-Free Municipal Callable Factor Adjusted 2027 Series Index

According to the Registration Statement, the 2027 Fund will seek to track the investment results, before fees and expenses, of the S&P AMT-Free Municipal Callable Factor Adjusted 2027 Series Index (the “2027 Underlying Index”), which measures the performance of investment-grade (as determined by Index Provider), non-callable and callable U.S. municipal bonds which will mature or be redeemed prior to December 1, 2027. The 2027 Underlying Index includes only Municipal Securities.

As of December 31, 2018, the 2027 Underlying Index included 9,582 component fixed income municipal bond securities from issuers in 51 different states or U.S. territories.¹⁰ The most heavily weighted security in the 2027 Underlying Index represented approximately 0.57% of the total weight of the 2027 Underlying Index and the aggregate weight of the top five most heavily weighted securities in the 2027 Underlying Index represented less than 2.56% of the total weight of the 2027 Underlying Index. Approximately 5.87% of the weight of the components in the 2027 Underlying Index had a minimum original principal outstanding of \$100 million or more and 77.82% of the weight of the components were a constituent of an offering where the original offering amount was at least \$100 million. In addition, the total dollar amount outstanding of issues in the 2027 Underlying Index was approximately \$81,765,343,000 and the average dollar amount outstanding of issues in the 2027 Underlying Index was approximately \$8,533,000.

Requirement for Index Constituents

Each bond in the 2027 Underlying Index must be denominated in U.S. dollars and must have a minimum par amount of \$2 million. To remain in the 2027 Underlying Index, bonds must maintain a minimum par amount greater than or equal to \$2 million as of the next rebalancing date. The 2027 Underlying Index includes Municipal Securities that have a rating of at least BBB—by S&P Global Ratings, Baa3 by Moody’s Investors Service, Inc., or BBB by Fitch

Ratings, Inc. A bond must be rated by at least one of these three rating agencies in order to qualify for the 2027 Underlying Index, and the lowest rating will be used in determining if the bond is investment-grade. All non-callable bonds in the 2027 Underlying Index will mature after December 31, 2026 and before December 2, 2027. Callable bonds are eligible subject to the following: (i) A final maturity after December 31, 2026 and before December 2, 2027, and a next call date no sooner than two years prior to final maturity; or (ii) a final maturity up to four years after the index maturity year, if the next call date is within the index maturity range. The 2027 Underlying Index will also contain at least 500 component securities.

S&P AMT-Free Municipal Callable Factor Adjusted 2028 Series Index

According to the Registration Statement, the 2028 Fund will seek to track the investment results, before fees and expenses, of the S&P AMT-Free Municipal Callable Factor Adjusted 2028 Series Index (the “2028 Underlying Index” and, collectively with the 2026 Underlying Index and the 2027 Underlying Index, the “Underlying Indexes”), which measures the performance of investment-grade (as determined by Index Provider), non-callable and callable U.S. municipal bonds which will mature or be redeemed prior to December 1, 2028. The 2028 Underlying Index includes only Municipal Securities.

As of December 31, 2018, the 2028 Underlying Index included 5,852 component fixed income municipal bond securities from issuers in 51 different states or U.S. territories.¹¹ The most heavily weighted security in the 2028 Underlying Index represented approximately 0.85% of the total weight of the 2028 Underlying Index and the aggregate weight of the top five most heavily weighted securities in the 2028 Underlying Index represented less than 2.42% of the total weight of the 2028 Underlying Index. Approximately 6.97% of the weight of the components in the 2028 Underlying Index had a minimum original principal outstanding of \$100 million or more and 80.36% of the weight of the components were a constituent of an offering where the original offering amount was at least \$100 million. In addition, the total dollar amount outstanding of issues in the 2028 Underlying Index was approximately \$54,637,103,000 and the average dollar amount outstanding of

issues in the 2028 Underlying Index was approximately \$9,336,000.

Requirement for Index Constituents

Each bond in the 2028 Underlying Index must be denominated in U.S. dollars and must have a minimum par amount of \$2 million. To remain in the 2028 Underlying Index, bonds must maintain a minimum par amount greater than or equal to \$2 million as of the next rebalancing date. The 2028 Underlying Index includes Municipal Securities that have a rating of at least BBB—by S&P Global Ratings, Baa3 by Moody’s Investors Service, Inc., or BBB—by Fitch Ratings, Inc. A bond must be rated by at least one of these three rating agencies in order to qualify for the 2028 Underlying Index, and the lowest rating will be used in determining if the bond is investment-grade. All non-callable bonds in the 2028 Underlying Index will mature after December 31, 2027 and before December 2, 2028. Callable bonds are eligible subject to the following: (i) A final maturity after December 31, 2027 and before December 2, 2028, and a next call date no sooner than two years prior to final maturity; or (ii) a final maturity up to four years after the index maturity year, if the next call date is within the index maturity range. The 2028 Underlying Index will also contain at least 500 component securities.

Portfolio Holdings

Each Fund’s holdings may include only the following types of Municipal Securities: General obligation bonds,¹² limited obligation bonds (or revenue bonds),¹³ municipal notes,¹⁴ municipal commercial paper,¹⁵ tender option bonds,¹⁶ variable rate demand notes and

¹² General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer’s general revenues and not from any particular source.

¹³ Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer’s general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

¹⁴ Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

¹⁵ Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

¹⁶ Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary

¹⁰ Unless otherwise noted, all statistics related to the 2027 Underlying Index presented hereafter were accurate as of December 31, 2018.

¹¹ Unless otherwise noted, all statistics related to the 2028 Underlying Index presented hereafter were accurate as of December 31, 2018.

demand obligations (“VRDOs”),¹⁷ municipal lease obligations,¹⁸ stripped securities,¹⁹ structured securities,²⁰ and zero coupon securities.²¹

Under normal market conditions,²² each Fund will generally invest at least 90% of its assets in the component securities of its respective Underlying Index, except during the last months of the Fund’s operations. With respect to the remaining 10% of its assets, each Fund may invest in certain futures, options and swap contracts,²³ cash and cash equivalents, including shares of money market funds advised by BFA or its affiliates, as well as in Municipal Securities not included in its respective Underlying Index, but which BFA believes will help the Fund track the Underlying Index. From time to time

market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

¹⁷ VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

¹⁸ Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

¹⁹ Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

²⁰ Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund’s net assets.

²¹ Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

²² The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

²³ Such futures, options and swap contracts will include only the following: Interest rate futures, interest rate options, and interest rate swaps. The derivatives will be centrally cleared and they will be collateralized. At least 90% of the Fund’s net assets that are invested in listed derivatives will be invested in instruments that trade in markets that are members or affiliates of members of the Intermarket Surveillance Group (“ISG”) or are parties to a comprehensive surveillance sharing with the Exchange.

when conditions warrant, however, a Fund may invest at least 80% of its assets in the component securities of its respective Underlying Index.

In the last months of operation, as the bonds held by a Fund mature (other than the tender options bonds mentioned below), the proceeds will not be reinvested in bonds (except as discussed below) but instead will be held in cash and cash equivalents, including, without limitation, shares of money market funds advised by BFA or its affiliates (“BlackRock Cash Funds”), AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper. These cash equivalents may not be included in the Fund’s benchmark index.

Discussion

Based on the characteristics of the Underlying Indexes and the representations made in the Requirements for Index Constituents sections above, the Exchange believes it is appropriate to allow the listing and trading of the Shares. The Underlying Indexes and Funds each satisfy all of the generic listing requirements for Index Fund Shares based on a fixed income index, except for the minimum principal amount outstanding requirement of 14.11(c)(4)(B)(i)(b). The Exchange notes that the representations in the Requirements for Index Constituents for the Underlying Indexes include the same representations made regarding the S&P AMT-Free Municipal Series Dec 2023 Index, the S&P AMT-Free Municipal Series Dec 2024 Index, and the S&P AMT-Free Municipal Series Dec 2025 Index (collectively, with the S&P AMT-Free Municipal Series Dec 2023 Index and the S&P AMT-Free Municipal Series Dec 2024 Index, the “Comparable Indexes”). Further, the Requirements for Index Constituents also include an additional representation that each Underlying [sic] Index will have at least 500 constituents on a continuous basis, which was also included in the filing related to the S&P AMT-Free Municipal Series Dec 2025 Index. The Exchange believes that this representation ensures diversification among constituent securities of the Indexes.²⁴

The Approval Order and 2025 Filing included the representation that a bond

must be investment-grade and must have an outstanding par value of at least \$2 million in order to be included in the Comparable Indexes. Each Underlying Index requires that, in order to remain in the Underlying Index, bonds must be investment-grade and maintain a minimum par amount greater than or equal to \$2 million and, further, BFA has represented that each Underlying Index will have at least 500 constituents on a continuous basis. As such, the Exchange believes that the proposal is consistent with the Act because the representations regarding the quality and size of the issuances included in each Underlying Index provide a strong degree of protection against index manipulation that is consistent with other proposals that have either been approved for listing and trading by the Commission or were effective upon filing, which is only furthered by the additional representation that each Underlying [sic] Index will have at least 500 constituents on a continuous basis, which ensures diversification among constituent securities.

In addition, the Exchange represents that: (1) Except for Rule 14.11(c)(4)(B)(i)(b), each Underlying [sic] Index currently satisfies all of the generic listing standards under Rule 14.11(c)(4); (2) the continued listing standards under Rule 14.11(c), as applicable to Index Fund Shares based on fixed income securities, will apply to the Shares; and (3) the issuer of the Funds is required to comply with Rule 10A-3²⁵ under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that each Fund will comply with all other requirements applicable to Index Fund Shares, including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indexes and the Intraday Indicative Value (“IIV”),²⁶ rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Circular, as set forth in the Exchange rules applicable to Index Fund Shares and prior Commission orders approving the generic listing rules applicable to the listing and trading of Index Fund Shares.

²⁵ 17 CFR 240.10A-3.

²⁶ The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Regular Trading Hours. Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

²⁴ See Approval Order and the 2025 Filing. The Exchange notes that the only substantive difference between the Comparable Indexes and the Underlying Indexes, other than the maturity dates of the constituents, is that the Underlying Indexes may include callable and non-callable Municipal Securities, while the Comparable Indexes include only non-callable Municipal Securities.

The current value of each Underlying Index will be widely disseminated by one or more major market data vendors at least once per day, as required by Rule 14.11(c)(4)(C)(ii). The portfolio of securities and other assets held by each Fund will be disclosed daily on its respective website at www.ishares.com. Further, each Fund's website will contain the Fund's prospectus and additional data relating to net asset value ("NAV") and other applicable quantitative information. The issuer has represented that the NAV of each Fund will be calculated daily and will be made available to all market participants at the same time. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer. To the extent that the Index Provider becomes a broker-dealer or becomes affiliated with a broker-dealer, the Index Provider will implement and will maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to each Underlying Index and each Underlying Index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, any advisory committee, supervisory board or similar entity that advises the Index Provider or that makes decisions on each Index, methodology and related matters, will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Underlying Indexes.

The Exchange's existing rules require that the issuer of the Funds notify the Exchange of any material change to the methodology used to determine the composition of an Underlying Index and, therefore, if the methodology of an Underlying Index was to be changed in a manner that would materially alter its existing composition, the Exchange would have advance notice and would evaluate the modifications to determine whether that Underlying [sic] Index remained sufficiently broad-based and well diversified.

Availability of Information

The Funds' website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for each Fund: (1) The prior business day's reported NAV, daily trading volume, 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. Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, each Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The website and information will be publicly available at no charge. The value, components, and percentage weightings of each Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing each Fund's respective Underlying Indexes are available on S&P's website and in the applicable Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the IIV that reflects an estimated intraday value of each Fund's portfolio, will be disseminated. Moreover, the IIV will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.²⁷ In addition, the quotations of certain of a Fund's holdings may not be updated during

U.S. trading hours if updated prices cannot be ascertained.

The dissemination of the IIV, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares will be available via the CTA high speed line. Price information regarding Municipal Securities and other non-exchange traded assets including certain derivatives, money market funds and other instruments, and repurchase agreements is available from third party pricing services and major market data vendors. Price information regarding Municipal Securities can also be obtained from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system. For exchange-traded assets, including futures, and certain options, such intraday information is available directly from the applicable listing exchange. In addition, price information for U.S. exchange-traded options will be available from the Options Price Reporting Authority.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff 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 federal securities laws applicable to trading on the Exchange.²⁸

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

²⁷ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the CTA or other data feeds.

²⁸ 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.

communicate as needed regarding trading in the Shares 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 in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁹ in general and Section 6(b)(5) of the Act³⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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 for Index Fund Shares based on a fixed income index in Rule 14.11(c)(4), except for the minimum principal amount outstanding requirement of 14.11(c)(4)(B)(i)(b). 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 the FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. 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 federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG. In addition, the Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE.

As discussed above, the Exchange believes that each Underlying Index is sufficiently broad-based to deter potential manipulation. The Underlying Indexes currently include at least 5,852 component securities. Whereas the Rule 14.11(c)(4)(B)(i)(e) requires that an index contain securities from a minimum of 13 non-affiliated issuers, the Underlying Indexes each include securities issued by municipal entities in at least 51 states or U.S. territories. Further, whereas the generic listing rules permit a single component security to represent up to 30% of the weight of an index and the top five component securities to, in aggregate, represent up to 65% of the weight of an index, the largest component security in each Underlying Index constitutes no more than 0.85% of the weight of the Underlying Index and the largest five component securities represent no more than 2.56% of the weight of an Underlying Index.

The Exchange believes that this significant diversification and the lack of concentration among constituent securities provide each Underlying Index with a strong degree of protection against index manipulation. Each Underlying Index and Fund satisfy all of the generic listing requirements for Index Fund Shares based on a fixed income index, except for the minimum principal amount outstanding requirement of 14.11(c)(4)(B)(i)(b). With this in mind, the Exchange notes that the representations in the Requirements for Index Constituents for each Underlying Index are identical to or more robust than the representations made regarding the Comparable Indexes and, further, BFA has made an additional representation regarding

diversification that was also included in the 2025 Filing.

The Approval Order and 2025 Filing included the representation that a bond must be investment-grade and must have an outstanding par value of at least \$2 million in order to be included in the Comparable Indexes. To remain in an Underlying Index, bonds must be investment-grade and maintain a minimum par amount greater than or equal to \$2 million and, further, BFA has represented that each Underlying Index will have at least 500 constituents on a continuous basis, which ensures diversification among constituent securities, a representation that was also included in the 2025 Filing. As such, the Exchange believes that the proposal is consistent with the Act because the representations regarding the quality and size of the issuances included in each Underlying Index provide a strong degree of protection against index manipulation that is consistent with other proposals that have either been approved for listing and trading by the Commission or were effective upon filing, which is only furthered by the additional representation that each Underlying [sic] Index will have at least 500 constituents on a continuous basis, which ensures diversification among constituent securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding each Fund, thereby promoting market transparency. Each Fund's portfolio holdings will be disclosed on its respective website daily after the close of trading on the Exchange. Moreover, the IIV for the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours. The current value of each Underlying Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Funds will include the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information.

If the Exchange becomes aware that a Fund's NAV is not being disseminated to all market participants at the same time, it will halt trading in the applicable Fund's Shares until such

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV and index value are not being disseminated for a Fund as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Exchange will halt trading. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, investors will have ready access to information regarding the applicable IIV, and quotation and last sale information for the Shares. Trade price and other information relating to Municipal Securities is available through the EMMA system.

All statements and representations made in this filing regarding the composition of the Underlying Indexes, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and IIV, or the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer is required to advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 14.12.

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 several new exchange-traded products that principally hold Municipal Securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Shares 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, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 three additional exchange-traded products 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 Act³¹ and Rule 19b-4(f)(6) thereunder.³²

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 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

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³³ normally does not become operative for 30 days after the date of its 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. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange noted that this proposal includes identical representations regarding the requirements for index constituents of each Underlying Index as are included in relation to the Comparable Indexes in the Approval Order and the 2025 Filing and thus raises no new or novel issues. The Exchange noted this proposal further includes an additional representation that each Underlying Index will have at least 500 constituents on a continuous basis, which the Commission believes should help ensure diversification among constituent securities in a manner similar to the 2025 Filing. Finally, the Exchange notes that waiver of the 30-day operative delay will expedite the listing and trading of the Shares, which may enhance competition among market participants, without undue delay, to the benefit of investors and the marketplace. The Commission believes that the proposal raises no new or substantive issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the 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 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.

as designated by the Commission. The Exchange has satisfied this requirement.

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

³⁵ 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).

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-2019-017 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-2019-017. 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-2019-017, and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-05700 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85383; File No. 265-30]

Fixed Income Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on Monday, April 15, 2019 in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will begin at 9:30 a.m. (ET) and will be open to the public. The meeting will be webcast on the Commission's website at www.sec.gov. Persons needing special accommodations to take part because of a disability should notify the contact persons listed below. The public is invited to submit written statements to the Committee. The meeting will include updates and presentations from the subcommittees and a discussion on the transition away from LIBOR.

DATES: The public meeting will be held on April 15, 2019. Written statements should be received on or before April 10, 2019.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email message to rule-comments@sec.gov. Please include File Number 265-30 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Vanessa A. Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. 265-30. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Commission's internet website at <http://www.sec.gov/comments/265-30/265-30.shtml>.

Statements also will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

David Dimitriou, Senior Special Counsel, at (202) 551-5131, or Benjamin Bernstein, Special Counsel, at (202) 551-5354, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549-7010.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Brett Redfearn, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: March 21, 2019.

Vanessa A. Countryman,

Acting Committee Management Officer.

[FR Doc. 2019-05734 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33404; File No. 812-15011]

Wells Fargo Securities, LLC, et al.

March 20, 2019.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order ("Temporary Order") exempting them from section 9(a) of the Act, with respect to an injunction entered against Wells Fargo Securities, LLC ("WFS") on March 20, 2019 by the U.S. District Court for the District of Rhode Island ("District Court"), in connection with a consent order between WFS and the Commission, until the Commission takes final action on an application for a permanent order (the "Permanent Order," and with the Temporary Order, the "Orders"). Applicants also have applied for a Permanent Order.

APPLICANTS: WFS; Wells Fargo Bank, N.A. ("WFBNA"), Galliard Capital

³⁶ 17 CFR 200.30-3(a)(12).

Management, Inc. (“Galliard”), Global Alternative Investment Services, Inc. (“GAISI”), Wells Capital Management Incorporated (“WCM”), Wells Fargo Asset Management (International) Limited (“WFAM International Limited”), Wells Fargo Asset Management (International), LLC (“WFAM International LLC”), Wells Fargo Funds Distributor, LLC (“WFFD”), Wells Fargo Funds Management, LLC (“WFFM”), and Wells Fargo Investment Institute, Inc. (“WFII”) (each a “Fund Servicing Applicant,” and together with WFS, the “Applicants”).

FILING DATE: The application was filed on March 20, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2019 and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: WFS: 550 South Tryon Street, 6th Floor, D1086–060, Charlotte, NC 28202; WFBNA: 101 North Phillips Avenue, Sioux Falls, SD 57104; Galliard: 800 LaSalle Avenue, Suite 1100, Minneapolis, MN 55402; GAISI and WFII: 401 South Tryon Street, TH 3, 5th Floor, Charlotte, NC 28202; WCM: 525 Market Street, 10th Floor, San Francisco, CA 94105; WFAM International Limited and WFAM International LLC: 33 King William Street, London, England, EC4R 9AT; WFFD and WFFM: 525 Market Street, 12th Floor, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Jessica Shin, Attorney-Adviser or Trace W. Rakestraw, Branch Chief at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The

complete application may be obtained via the Commission’s website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551–8090.

Applicants’ Representations

1. WFS is an indirect wholly-owned subsidiary of Wells Fargo & Company (“WFC”), a registered financial holding company and bank holding company. WFS is a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”) as well as a municipal securities broker and a municipal securities dealer subject to the rules of the Municipal Securities Rulemaking Board (“MSRB”).

2. WFBNA is a national banking association that is a direct and indirect, wholly-owned subsidiary of WFC. A separately identifiable department within WFBNA, Wells Capital Management Singapore, is registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). Wells Capital Management Singapore is an investment adviser to certain Funds listed in Annex B of the Application.

3. Galliard, WCM, WFAM International Limited, WFAM International LLC, WFFM, and WFII are indirect wholly-owned subsidiaries of WFC and each is an investment adviser registered under the Advisers Act. The Funds to which Galliard, WCM, WFAM, WFFM, and WFII provide investment advisory services are listed in Annexes A and B of the Application.

4. GAISI and WFFD are indirect wholly-owned subsidiaries of WFC and are broker-dealers registered under the Exchange Act. The Funds to which each serves as principal underwriter are listed in Annex A and Annex C, respectively, of the Application.

5. Other than the Fund Servicing Applicants, no existing company of which WFS is an affiliated person within the meaning of section 2(a)(3) of the Act currently serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor of any registered investment company, employees’ securities company or investment company that has elected to be treated as a business development company under the Act, or as principal underwriter (as defined in section 2(a)(29) of the Act) for any open-end registered investment company, registered unit investment trust (“UIT”) or registered face amount certificate company (“FACC”) (such activities, the “Fund Servicing Activities”). Applicants request that any relief

granted by the Commission pursuant to the application also apply to any existing company of which WFS is an affiliated person within the meaning of section 2(a)(3) of the Act and to any other company of which WFS may become an affiliated person in the future (together with the Fund Servicing Applicants, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.¹

6. On March 7, 2016, the Commission filed a complaint (“Original Complaint”) and on October 28, 2016 an amended complaint (“Amended Complaint,” and together with the Original Complaint, the “Complaint”) against WFS in the District Court alleging violations of sections 17(a)(2) of the Securities Act of 1933 (“Securities Act”), section 15B(c)(1) of the Exchange Act, and MSRB rule G–17 (the “Action”).²

7. The Complaint alleged the following: WFS acted as lead placement agent in an offering of municipal bonds (“Offering”) by the Rhode Island Economic Development Corporation (“RIEDC”) in 2010. The proceeds of the Offering went to 38 Studios, LLC (“38 Studios”), an early-stage, pre-revenue videogame development company. As lead placement agent in the Offering, WFS knew or should have known about, and should have disclosed, in the private placement memorandum for the Offering (the “Offering Document”) (i) 38 Studios’ need for financing in addition to that provided by the Offering and (ii) the total compensation received by WFS in connection with the Offering and any related conflict of interest. WFS failed to include disclosure regarding these matters in the Offering Document (“Conduct”). As a result, the Offering Document was materially misleading, and WFS violated sections 17(a)(2) of the Securities Act, section 15B(c)(1) of the Exchange Act and MSRB rule G–17. Although 38 Studios attempted to obtain the additional financing needed following the Offering, it was unable to do so and defaulted on its loan payments to the RIEDC in 2012.

8. WFS and the Commission reached an agreement to settle the Action and

¹ The Fund Servicing Applicants and other Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

² The Complaint also alleged that an officer and employee of WFS who worked on the Offering (“Individual Defendant”) aided and abetted the violations by WFS. The Complaint also alleged that WFS violated section 17(a)(3) of the Securities Act and MSRB rule G–32, but the Commission subsequently agreed to dismissed those claims.

WFS has executed a “Consent of Defendant Wells Fargo Securities, LLC” (“Consent”). Pursuant to the Consent, WFS consented to the entry of a judgment by the District Court in the Action against WFS (“Final Judgment”), without admitting or denying the allegations in the Complaint.

9. On March 20, 2019, the District Court entered the Final Judgment permanently enjoining WFS from violating section 17(a)(2) of the Securities Act, section 15B(c)(1) of the Exchange Act and MSRB rule G–17 (the “Injunction”). The Final Judgment also requires WFS to pay a civil monetary penalty in the amount of \$812,500.³

Applicants’ Legal Analysis

1. Section 9(a)(2) of the Act provides, in pertinent part, that a person may not serve or act as, among other things, an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company, UIT, or FACC, if such person “. . . by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.” Section 9(a)(3) of the Act makes the prohibitions of section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. The Injunction would result in a disqualification of WFS from acting in the capacities specified in section 9(a)(2) because WFS would be permanently enjoined by the District Court from engaging in or continuing certain conduct and/or practices in connection with the offer or sale of any security. The Injunction would also result in the disqualification of the Fund

Servicing Applicants under section 9(a)(3) because each of the Fund Servicing Applicants may be considered to be an affiliated person within the meaning of section 2(a)(3) of the Act. Other Covered Persons similarly would be disqualified pursuant to section 9(a)(3) were they to act in any of the capacities listed in section 9(a).

2. Section 9(c) of the Act provides that, upon application, the Commission shall by order grant an exemption from the disqualification provisions of section 9(a) of the Act, either unconditionally or on an appropriate temporary or other conditional basis, to any person if that person establishes that: (1) The prohibitions of section 9(a), as applied to the person, are unduly or disproportionately severe; or (2) the conduct of the person has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. Applicants and other Covered Persons may, if the relief is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that: (i) The scope of the misconduct was limited and did not involve any of the Fund Servicing Applicants performing Fund Servicing Activities, or any Fund with respect to which the Fund Servicing Applicants engaged in Fund Servicing Activities or their respective assets; (ii) application of the statutory bar would result in material economic losses, and the operations of the Funds would be disrupted as they sought to engage new underwriters, advisers and/or sub-advisers, as the case may be; (iii) the prohibitions of section 9(a), if applied to the Fund Servicing Applicants and other Covered Persons, would be unduly or disproportionately severe; and (iv) the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct giving rise to the Injunction did not involve any Fund, any Fund Servicing Applicant, or any Fund Servicing Activities.⁴ The Conduct relates solely

to alleged material omissions in the offering document used in connection with one private placement of municipal bonds.⁵ Accordingly, Applicants assert that it would be unduly and disproportionately severe to allow section 9(a) to disqualify Covered Persons from providing Fund Servicing Activities.

5. Applicants maintain that neither the protection of investors nor the public interest would be served by permitting the section 9(a) disqualifications to apply to the Fund Servicing Applicants because those disqualifications would deprive the Funds of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the prohibitions of section 9(a) could operate to the financial detriment of the Funds and their shareholders, which would be an unduly and disproportionately severe consequence given that no Fund Servicing Applicants were involved in the Conduct and that the Conduct did not involve the Funds or Fund Servicing Activities. Applicants further assert that the inability of the Fund Servicing Applicants to continue providing investment advisory and underwriting services to Funds would result in the Funds and their shareholders facing other potential hardships, as described in the application.

6. Applicants assert that if the Fund Servicing Applicants were barred under section 9(a) from providing investment advisory and underwriting services to the Funds and were unable to obtain the requested exemption, the effect on their businesses and employees would be severe. Applicants represent that the Fund Servicing Applicants have committed substantial capital and resources to establishing expertise in advising and sub-advising Funds and in support of their principal underwriting business. Prohibiting them from providing Fund Servicing Activities would materially adversely affect each Fund Servicing Applicant’s business. In the case of WFFM, the effects would be particularly significant given that, as of September 30, 2018, the Funds represented almost all of the assets with

Funds’ contemporaneous portfolio holdings, the Funds did not purchase any securities in the Offering.

⁵ The Individual Defendant is an officer and an employee of WFBNA, which is a Fund Servicing Applicant. Applicants, however, have represented that the Individual Defendant has never had, and does not currently have, any material involvement in WFBNA’s Fund Servicing Activities, including at WFBNA’s separately identifiable department registered as an investment adviser.

³ *Id.*

⁴ To the Applicants’ knowledge and based on certain Fund Servicing Applicants’ review of the

respect to which it provides investment advisory services. Similarly, in the case of WFFD, barring it from continuing to provide principal underwriting services to the Funds would cause it to lose a substantial part of its business.

7. Applicants represent that: (1) With the exception of the Individual Defendant,⁶ none of the Fund Servicing Applicants' current or former directors, officers or employees had any involvement in the Conduct;⁷ (2) the personnel who were involved in the Conduct (or who may be subsequently identified by the Applicants as having been involved in the Conduct) have never had, do not currently have and will not have any involvement in providing Fund Servicing Activities at a Covered Person;⁸ and (3) because the Conduct did not involve the performance of Fund Serving Activities and the personnel of the Fund Servicing Applicants involved in Fund Servicing Activities did not have any involvement in the Conduct, shareholders of Funds that received investment advisory, depository and principal underwriting services from the Fund Servicing Applicants were not affected in any way.

8. Applicants represent that the Municipal Products Group at WFS ("MPG") has implemented a robust and comprehensive compliance program designed to ensure compliance with the rules and regulations relevant to WFS's activities as an underwriter and placement agent of municipal securities. As further detailed in the Application, since the time of the Offering, MPG Compliance and MPG Legal have retained outside counsel to assist with the development and periodic updating of a transactional due diligence training module for negotiated municipal securities underwriting transactions. All investment banking and underwriting syndicate personnel within the MPG must complete the module annually. The module educates them on the due diligence process. Furthermore, in late 2010, after the Conduct occurred and the Offering was nearly completed, MPG

Compliance implemented a number of enhancements to MPG's compliance policies and procedures, including the creation and implementation of a "Negotiated Transaction Diligence Form". The Negotiated Transaction Diligence Form was designed to and does provide MPG personnel with a clear list of steps to take to meet MPG's regulatory obligations as an underwriter and placement agent of municipal securities. The Negotiated Transaction Diligence Form requires, among other things, the person completing it to identify actual and potential material conflicts of interest between WFS, as a municipal securities underwriter, and its issuer-clients. In October 2010, the Negotiated Transaction Diligence Form was introduced to MPG's Public Finance Investment Banking Group ("MPG Banking Group"), which was involved with the Offering, for use with new transactions (*i.e.*, transactions commenced after that date). The Form was not completed for the Offering because, by October 2010, the Offering was nearly completed. It was not a new transaction. WFS believes that, if the Negotiated Transaction Diligence Form had been implemented prior to the Offering, certain Conduct would have been avoided because the total compensation paid to WFS in connection with the Offering would likely have been identified on the Form as a potential conflict of interest between WFS and the RIEDC and considered for disclosure in the Offering Document. As a result of the foregoing, and additional remedial measures detailed in the Application, Applicants submit that granting the exemption as requested in the application is consistent with the public interest and the protection of investors.

9. To provide further assurance that the exemptive relief being requested herein would be consistent with the public interest and the protection of the investors, the Fund Servicing Applicants agree that they will, as soon as reasonably practicable, distribute to the boards of directors of the Funds ("Boards") written materials describing the circumstances that led to the Injunction, any impact on the Funds, and the Application. The written materials will include an offer to discuss the materials at an in-person meeting with the Boards, including the directors who are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act and any "independent legal counsel" as defined in rule 0-1(a)(6) under the Act. Fund Servicing Applicants undertake to provide the Boards with all information

concerning the Injunction and the Application that is necessary for the Funds to fulfill their disclosure and other obligations under the U.S. federal securities laws and will provide them with a copy of the Final Judgment as entered by the District Court.

10. Certain Fund Servicing Applicants, as well as certain of their affiliates, have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the Application. Applicants, however, note that none of the previous section 9(c) orders granted to Fund Servicing Applicants related to matters pertaining to Fund Servicing Activities. Further, Applicants state that the facts and circumstances underlying the previously obtained section 9(c) orders do not form a pattern of allegedly violative conduct, including in any particular area, by WFS or any of the other Applicants.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the Application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the Application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Each Applicant and each other Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of the date of the Permanent Order.

3. WFS will comply with the material terms and conditions of the Final Judgment.

4. The Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management, with a copy to the Chief Counsel of the Commission's Division of Enforcement, of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have

⁶ See *supra* note 5.

⁷ To make this representation, WFS conducted due diligence through its human resources department and confirmed from interviews with the Individual Defendant's supervisor that he has never been involved in Fund Servicing Activities.

⁸ WFS has included a notation in the employment file of the Individual Defendant that he cannot transition into a role that would involve him in providing Fund Servicing Activities at any Covered Person. Further, each Fund Servicing Applicant has confirmed that its compliance policies and procedures include provisions that are designed to ensure that they do not become disqualified pursuant to Section 9(a) of the Act and to ensure compliance with the terms and conditions of the Orders.

made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the representations and conditions in the application, until the Commission takes final action on their application for a permanent order.

By the Commission.

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05686 Filed 3-25-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85375; File No. SR-NYSEArca-2018-98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the iShares Commodity Multi-Strategy ETF Under NYSE Arca Rule 8.600-E

March 20, 2019.

I. Introduction

On December 21, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the iShares Commodity Multi-Strategy ETF (“Fund”) under NYSE Arca Rule 8.600-E. On February 1, 2019, pursuant to Section 19(b)(1) of the Act, ³ the Commission noticed the proposed rule change and, pursuant to Section 19(b)(2) of the Act, ⁴ designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change. ⁵ On March 6, 2019, the

Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. ⁶ On March 14, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1. ⁷ The Commission has received no comment letters on the proposal. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act ⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Exchange’s Description of the Proposal, as Modified by Amendment No. 2 ⁹

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by iShares U.S. ETF Trust

designated March 21, 2019, as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

⁶ Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2018-98/srnysearca201898-5031693-183046.pdf>.

⁷ In Amendment No. 2, the Exchange: (1) Identified the Reference Benchmark (as defined below); (2) clarified that the Fund is not obligated to invest in any futures contracts included in, and does not seek to replicate the performance of, the Reference Benchmark; (3) modified the types of derivative instruments and reference assets for such derivative instruments that the Fund may invest in; (4) clarified that commodity-linked notes are among the Fixed Income Instruments (as defined below) that the Fund may invest in; (5) specified that the Fund may invest in ETNs and ETFs (each as defined below); (6) added a representation that to the extent the Trust (as defined below) effects the redemption of Shares in cash, such transactions will be effected in the same manner or in an equitable manner for all Authorized Participants (as defined below), subject to the best interests of the Fund; (7) added a representation that the Fund’s holdings in OTC Derivatives (as defined below) will satisfy the criteria applicable to holdings in listed derivatives in Commentary .01(d)(2) to NYSE Arca Rule 8.600-E on an initial and continued listing basis; (8) added a representation that the Adviser (as defined below) and its affiliates actively monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis; (8) stated that the Reference Benchmark price is available via Bloomberg and that the Reference Benchmark methodology and constituent list is available via ICE Data Services; and (9) made technical and conforming changes. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2018-98/srnysearca201898-5123714-183326.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ For a complete description of the Exchange’s proposal, see Amendment No. 2, *supra* note 7.

(“Trust”), which is registered with the Commission as an open-end management investment company. ¹⁰ The Fund is a series of the Trust.

BlackRock Fund Advisors (“Adviser”) will be the investment adviser for the Fund. ¹¹ BlackRock Investments, LLC will be the distributor for the Fund’s Shares. State Street Bank and Trust Company will serve as the administrator, custodian and transfer agent for the Fund.

A. Fund Investments

According to the Exchange, the investment objective of the Fund will be to seek to provide exposure, on a total return basis, to a group of commodities with characteristics of carry, momentum, and value. The Fund is actively managed and seeks to achieve its investment objective in part ¹² by, under normal market conditions, ¹³ investing in listed and over-the-counter (“OTC”) total return swaps referencing the ICE BofAML Commodity Multi-Factor Total Return Index (“Reference Benchmark”). ¹⁴ In connection with

¹⁰ According to the Exchange, on December 3, 2018, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 and under the Investment Company Act of 1940 (“1940 Act”) relating to the Fund (File Nos. 333-179904 and 811-22649) (“Registration Statement”). In addition, the Exchange states that the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601).

¹¹ According to the Exchange, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, 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. The Exchange also represents that the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Investment Advisers Act of 1940 relating to codes of ethics.

¹² The Fund’s investment objective is also achieved by investing in cash, cash equivalents, Commodity Investments, Fixed Income Securities and Short-Term Fixed Income Securities (each as defined or described below).

¹³ The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

¹⁴ Although the Fund may hold swaps on the Reference Benchmark, or direct investments in, the same futures contracts as those included in the Reference Benchmark, the Fund is not obligated to invest in any futures contracts included in, and does not seek to replicate the performance of, the Reference Benchmark.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85033, 84 FR 2618 (February 7, 2019). The Commission

investments in swaps on the Reference Benchmark, the Fund is expected to establish new swaps contracts on an ongoing basis and replace expiring contracts.¹⁵ Swaps subsequently entered into by the Fund may have terms that differ from the swaps the Fund previously held. The Fund expects generally to pay a fixed payment rate and certain swap related fees to the swap counterparty and receive the total return of the Reference Benchmark, including in the event of negative performance by the Reference Benchmark, negative return (*i.e.*, a payment from the Fund to the swap counterparty). In seeking total return, the Fund additionally aims to generate interest income and capital appreciation through a cash management strategy consisting primarily of cash, cash equivalents,¹⁶ and fixed income securities other than cash equivalents, as described below.

The Fund intends to follow a multifactor strategy reflected by the Reference Benchmark, which Reference Benchmark equally weights three sub-indices designed to provide exposure to carry, momentum, and value factors. The Fund will invest in financial instruments described below that provide exposure to commodities and not in the physical commodities themselves. The “carry” sub-index emphasizes commodities and contract months with the greatest degree of backwardation or lowest degree of contango.¹⁷ Second, the “momentum” sub-index underweights or overweights commodities based on the strength of performance patterns over multiple time periods. Third, the “value” sub-index measures value for each commodity by the ratio of its 3-month average spot price to its 5-year average. Sector weights are held constant versus a broad

non-factor weighted commodity index, but within each sector, weights of individual commodities are tilted to favor those with the lowest valuation ratio. Within each sub-index, contract months are selected to maximize backwardation and minimize contango.

The Fund expects to obtain a substantial amount of its exposure to the carry, momentum, and value strategies by entering into total return swaps that pay the returns of the commodity futures contracts referenced in the Reference Benchmark. The Reference Benchmark includes 20 futures contracts on physical agricultural, energy, livestock, precious metals, and industrial metals listed on U.S. regulated futures exchanges.

The Fund (through its Subsidiary (as defined below)) may hold the following listed derivative instruments: Futures, options, and swaps on commodities (which commodities are from the same sectors as those included in the Reference Benchmark); currencies; U.S. and non-U.S. equity securities; fixed income securities (as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E, but excluding Short-Term Fixed Income Securities (as defined below)); interest rates; and financial rates; or a basket or index of any of the foregoing (collectively, “Listed Derivatives”).¹⁸ Listed Derivatives will comply with the criteria in Commentary .01(d) of NYSE Arca Rule 8.600–E.

The Fund (through its Subsidiary (as defined below)) may hold the following OTC derivative instruments: Forwards, options, and swaps on commodities (which commodities are from the same sectors as those included in the Reference Benchmark); currencies; U.S. and non-U.S. equity securities; fixed income securities (as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E, but excluding Short-Term Fixed Income Securities); interest rates; and financial rates; or a basket or index of any of the foregoing (collectively, “OTC Derivatives,”¹⁹ and together with Listed Derivatives, “Commodity Investments”).²⁰

¹⁸ Examples of Listed Derivatives the Fund may invest in include: Exchange traded futures contracts similar to those found in the Reference Benchmark, exchange traded futures contracts on the Reference Benchmark, swaps on commodity futures contracts similar to those found in the Reference Benchmark, and futures and options that correlate to the investment returns of commodities without investing directly in physical commodities.

¹⁹ As discussed below under “Application of Generic Listing Requirements,” the Fund’s and the Subsidiary’s holdings in OTC Derivatives will not comply with the criteria in Commentary .01(e) of NYSE Arca Rule 8.600–E.

²⁰ Examples of OTC Derivatives the Fund may invest in include swaps on commodity futures contracts similar to those found in the Reference

The Fund may hold cash, cash equivalents, and fixed income securities other than cash equivalents, as described further below.

Specifically, the Fund may invest in Short-Term Fixed Income Securities (as defined below) other than cash equivalents on an ongoing basis to provide liquidity or for other reasons.²¹ Short-Term Fixed Income Securities will have a maturity of no longer than 397 days and include only the following: (i) Money market instruments; (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers’ acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper; (v) non-convertible corporate debt securities (*e.g.*, bonds and debentures); (vi) repurchase agreements; (vii) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks that may be purchased by the Fund; and (viii) sovereign obligations (collectively, “Short-Term Fixed Income Securities”). Any of these securities may be purchased on a current or forward-settled basis.²²

The Fund also may invest in fixed income securities as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E,²³ other than cash equivalents and Short-Term Fixed Income Securities, with remaining maturities longer than 397 days (“Fixed Income

Benchmark and options that correlate to the investment returns of commodities without investing directly in physical commodities.

²¹ As discussed under “Application of Generic Listing Requirements” below, investments in Short-Term Fixed Income Securities will not comply with the requirements of Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E.

²² To the extent that the Fund and the Subsidiary invest in cash and Short-Term Fixed Income Securities that are cash equivalents (*i.e.*, that have maturities of less than 3 months) as specified in Commentary .01(c) to NYSE Arca Rule 8.600–E, such investments will comply with Commentary .01(c) and may be held without limitation. Non-convertible corporate debt securities and sovereign obligations are not included as cash equivalents in Commentary .01(c).

²³ Commentary .01(b) to NYSE Arca Rule 8.600–E defines fixed income securities as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSEs”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

¹⁵ Swaps on the Reference Benchmark are included in “Commodity Investments” as defined below.

¹⁶ Cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

¹⁷ According to the Exchange, in order to maintain exposure to a futures contract on a particular commodity, an investor must sell the position in the expiring contract and buy a new position in a contract with a later delivery month, which is referred to as “rolling.” If the price for the new futures contract is less than the price of the expiring contract, then the market for the commodity is said to be in “backwardation.” In these markets, roll returns are positive, which is referred to as “positive carry.” The term “contango” is used to describe a market in which the price for a new futures contract is more than the price of the expiring contract. In these markets, roll returns are negative, which is referred to as “negative carry.” The “carry” sub-index seeks to employ a positive carry strategy that emphasizes commodities and futures contract months with the greatest degree of backwardation and lowest degree of contango, resulting in net gains through positive roll returns.

Securities"). Such Fixed Income Securities will comply with requirements of Commentary .01(b) to NYSE Arca Rule 8.600–E.²⁴

The Fund may also hold exchange-traded notes ("ETNs")²⁵ and exchange-traded funds ("ETFs").²⁶

The Fund's exposure to Commodity Investments is obtained by investing through a wholly-owned subsidiary organized in the Cayman Islands ("Subsidiary").²⁷ The Fund controls the Subsidiary, and the Subsidiary is advised by the Adviser and has the same investment objective as the Fund. In compliance with the requirements of Sub-Chapter M of the Internal Revenue Code of 1986, the Fund may invest up to 25% of its total assets in the Subsidiary. The Subsidiary is not an investment company registered under the 1940 Act and is a company organized under the laws of the Cayman Islands. The Trust's Board of Trustees ("Board") has oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as sole shareholder of the Subsidiary.

The Fund's Commodity Investments held in the Subsidiary are intended to provide the Fund with exposure to broad commodities. The Subsidiary may hold cash and cash equivalents.

B. Investment Restrictions

The Fund and the Subsidiary will not invest in securities or other financial instruments that have not been described in the proposed rule change. 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 Reference Benchmark.

²⁴ Among the Fixed Income Securities in which the Fund may invest are commodity-linked notes.

²⁵ ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

²⁶ For purposes of the filing, the term "ETFs" includes 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). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (e.g., 2X, –2X, 3X or –3X) ETFs.

²⁷ The Exchange represents that all statements related to the Fund's investments and restrictions are applicable to the Fund and Subsidiary collectively.

C. Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or "earmark" assets determined to be liquid by the Adviser in accordance with procedures established by the Board. In addition, the Fund has included 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 use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. The Adviser understands that 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 of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value ("NAV"), which should ensure that Shares of the Fund 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.

D. Application of Generic Listing Requirements

The Exchange represents that 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 Exchange represents that, other than Commentary .01(b)(1)–(4) (with respect to Short-Term Fixed Income Securities) and .01(e) (with respect to OTC Derivatives) to NYSE Arca Rule 8.600–E, as described below, the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600–E.

According to the Exchange, the Fund's investments in Short-Term Fixed Income Securities will not comply with the requirements set forth in Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E.²⁸ The Exchange states

²⁸ Commentary .01(b)(1)–(4) to NYSE Arca Rule 8.600–E requires that the components of the fixed income portion of a portfolio meet the following criteria initially and on a continuing basis: (1)

that while the requirements set forth in Commentary .01(b)(1)–(4) include rules intended to ensure that the fixed income securities included in a fund's portfolio are sufficiently large and diverse, and have sufficient publicly available information regarding the issuances, the Exchange believes that any concerns, regarding non-compliance are mitigated by the types of instruments that the Fund would hold. The Exchange represents that the Fund's Short-Term Fixed Income Securities primarily would include those instruments that are included in the definition of cash and cash equivalents,²⁹ but are not considered cash and cash equivalents because they have maturities of three months or longer. The Exchange believes, however, that, because all Short-Term Fixed Income Securities, including non-convertible corporate debt securities and sovereign obligations (which are not cash equivalents as enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E), are highly liquid they are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as proposed are generally consistent with the policy concerns which Commentary .01(b)(1)–(4) is intended to address. Because the Short-Term Fixed Income Securities will consist of high-quality fixed income securities described above, the Exchange believes that the policy concerns that Commentary .01(b)(1)–(4)

Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more; (2) no component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) shall not in the aggregate account for more than 65% of the fixed income weight of the portfolio; (3) an underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a); and (4) component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

²⁹ See *supra* note 16.

is intended to address are otherwise mitigated and that the Fund should be permitted to hold these securities in a manner that may not comply with Commentary .01(b)(1)–(4).

The Exchange represents that the Fund's portfolio with respect to OTC Derivatives will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E.³⁰ Specifically, the Exchange states that up to 60% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC Derivatives. The Exchange states that the Adviser believes that it is important to provide the Fund with additional flexibility to manage risk associated with its investments and, depending on market conditions, it may be critical that the Fund be able to utilize available OTC Derivatives to efficiently gain exposure to the multiple commodities that underlie the Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark. The Exchange states that OTC Derivatives can be tailored to provide specific exposure to the Fund's Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark, allowing the Fund to more efficiently meet its investment objective.³¹ The Exchange further states that if the Fund were to gain commodity exposure exclusively through the use of listed futures, the Fund's holdings in Listed Derivatives would be subject to position limits and accountability levels established by an exchange, and such limitations would restrict the Fund's ability to gain efficient exposure to the commodities in the Reference Benchmark, or futures contracts similar to those found in the Reference Benchmark, thereby impeding the Fund's ability to satisfy its investment objective.

The Exchange states that the Adviser represents that the Fund's holdings in

³⁰ Commentary .01(e) to NYSE Arca Rule 8.600–E provides that, on an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives).

³¹ As an example, the Exchange states that the Reference Benchmark is composed of 20 futures contracts across 20 physical commodities, which may not be sufficiently liquid and would not provide the commodity exposure the Fund requires to meet its investment objective if the Fund were to invest in the futures directly. The Exchange states that a total return swap can be structured to provide exposure to the same futures contracts as exist in the Reference Benchmark, as well as commodity futures contracts similar to those found in the Reference Benchmark, while providing sufficient efficiency to allow the Fund to more easily meet its investment objective.

OTC Derivatives will satisfy the criteria applicable to holdings in Listed Derivatives in Commentary .01(d)(2) to NYSE Arca Rule 8.600–E on an initial and continued listing basis.³² Thus, with respect to the Fund's holdings in OTC Derivatives, the aggregate gross notional value of OTC Derivatives based on any five or fewer underlying reference assets will not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of OTC Derivatives based on any single underlying reference asset will not exceed 30% of the weight of the portfolio (including gross notional exposures). The Exchange also represents that the Adviser and its affiliates actively monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis. Finally, the Exchange states that the Adviser represents that futures contracts on all commodities in the Reference Benchmark are traded on futures exchanges that are members of the Intermarket Surveillance Group.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2018–98, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³³ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for

³² Commentary .01(d)(2) to NYSE Arca Rule 8.600–E provides that, with respect to a fund's portfolio, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

³³ 15 U.S.C. 78s(b)(2)(B).

³⁴ *Id.*

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.”³⁵

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,³⁶ any request for an opportunity to make an oral presentation.³⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by April 16, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 30, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2,³⁸ in addition to any other comments they may wish to submit about the proposed rule change.

In this regard, the Commission seeks comment on the Exchange's statements that the Fund will not comply with the requirement in Commentary .01(e) to NYSE Arca Rule 8.600–E that

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 17 CFR 240.19b–4.

³⁷ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³⁸ See *supra* note 7.

investments in OTC Derivatives be limited to 20% of the assets of the Fund's portfolio. Instead, the Fund's investments in OTC Derivatives would be limited to 60% of the Fund's assets. Such OTC Derivatives may be forwards, options, and swaps on commodities (which commodities are from the same sectors as those included in the Reference Benchmark); currencies; U.S. and non-U.S. equity securities; fixed income securities (as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E, but excluding Short-Term Fixed Income Securities); interest rates; and financial rates; or a basket or index of any of the foregoing. The Commission specifically seeks comment on whether the Fund's proposed investments in OTC Derivatives are consistent with the requirement 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.”³⁹ Has the Exchange has provided sufficient information relating to OTC Derivatives, including the underlying reference assets of such OTC Derivatives, for the Commission to determine that trading of the Fund's Shares would be 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–2018–98 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–2018–98. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–98 and should be submitted by April 16, 2019. Rebuttal comments should be submitted by April 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05704 Filed 3–25–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85373; File No. SR–NASDAQ–2019–015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a)(3)

March 20, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on March 12, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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.

⁴⁰ 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

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 amend the Exchange's transaction fees at Equity 7, Section 118(a)(3) to adopt a \$0.00005 per share executed credit provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in securities listed on exchanges other than Nasdaq and NYSE (“Tape B Securities”) that provide liquidity, as described further below.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Equity 7, Section 118(a)(3) to adopt a \$0.00005 per share executed credit provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tape B Securities that provide liquidity. The proposed credit would be provided to a member in addition to any other credit it qualifies for under Section 118(a)(3), including the \$0.0001 per share executed credit for displayed quotes/orders in Tape B securities provided in addition to other credits under Section 118(a)(3).³ To

³ The Exchange provides the credit to members with shares of liquidity provided in Tape B securities during the month representing at least 0.10% of Consolidated Volume during the month through one or more of its Nasdaq Market Center MPIDs. Thus, a member that qualifies for the proposed credit would also qualify for the existing \$0.0001 per share executed credit, resulting in a combined credit of \$0.00015 per share executed

³⁹ 15 U.S.C. 78f(b)(5).

qualify for the proposed credit, a member must have shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume⁴ during the month, including shares of liquidity provided with respect to Tape B securities that represent at least 0.60% of Consolidated Volume.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷

Likewise, in *NetCoalition v. Securities and Exchange Commission*⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁹ As the court emphasized, the Commission “intended

in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹

The Exchange believes that the proposed credit is reasonable because it is similar to an existing credit provided by the Exchange. As described above, the Exchange currently provides a \$0.0001 per share executed credit for displayed quotes/orders in Tape B securities, which is provided in addition to other credits under Section 118(a)(3). The proposed credit will likewise be provided in addition to any other credits that a member may qualify for including the \$0.0001 per share executed credit. The Exchange has set the level of Consolidated Volume in Tape B securities required to qualify for the credit higher than the current \$0.0001 per share executed credit’s criteria and added an additional 1.75% or greater Consolidated Volume requirement to reflect the significant credits a member would receive if it qualified for the proposed credit. In this regard, a member that qualifies for the proposed \$0.00005 per share executed credit would also qualify for the existing \$0.0001 per share executed credit for displayed quotes/orders in Tape B securities. Consequently, a member would receive a combined credit of \$0.00015 per share executed provided in addition to other credits under Section 118(a)(3) if it qualified for the proposed new credit. Consequently, the Exchange believes that the proposed qualification criteria are commensurate with level of credit received.

The Exchange believes that the proposed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. The proposed qualification criteria of the

proposed credit is [sic] set at a sufficiently high level to reflect the significant credits a member would receive if it qualified. Any member may elect to provide the levels of market activity required by the proposed credit’s qualification criteria in order to receive the credit. If the member determines that the level of Consolidated Volume is too high, it has other opportunities to receive credits that require less Consolidated Volume, including the \$0.0001 per share executed credit currently provided under Section 118(a)(3). The Exchange also believes that it is an equitable allocation and is not unfairly discriminatory to limit the credit to only quotes/orders in Tape B securities because the Exchange has observed lower overall volume on the Exchange in Tape B securities in comparison to Tapes A and C securities, and is thus providing incentive to members to provide displayed liquidity in Tape B securities. The Exchange has limited funds with which to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective and improve market quality in areas that the Exchange determines are in need of improvement. For these reasons, the Exchange believes that the proposed credit is an equitable allocation and is not unfairly discriminatory.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the credits available to member firms

provided in addition to other credits under Section 118(a)(3).

⁴ Consolidated Volume is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity. See Equity 7, Section 118(a).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁸ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

⁹ See *NetCoalition*, at 534–535.

¹⁰ *Id.* at 537.

¹¹ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

for execution of securities in Tape B securities does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed change provides another opportunity for members to receive a credit based on their market-improving behavior. As noted above, the proposed credit would be provided in addition to other credits under the rule for which the member qualifies. Thus, any member may elect to provide the levels of market activity required by the credit's qualification criteria in order to receive the credit. Moreover, other market venues are free to adopt the same or similar credits and incentives as a competitive response to this proposed change. As a consequence, the Exchange does not believe that the proposed credit burdens competition among market participants or market venues. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result and, conversely, if the proposal is successful at attracting greater volume to the Exchange other market venues are free to make similar changes as a competitive response. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2019-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-015 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-05706 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, March 28, 2019 at 9:00 a.m. (ET).

PLACE: The meeting will be held in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 9:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED: On March 8, 2019, the Commission issued notice of the Committee meeting (Release No. 33-10611), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Welcome remarks; a discussion regarding stock exchanges and, specifically, investor protection under the modern exchange regulatory structure; a discussion regarding disclosures on human capital (which may include a recommendation from the Investor as Owner subcommittee); a discussion regarding trends in investment research and potential regulatory implications; subcommittee reports; and a nonpublic administrative work session during lunch.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 200.30-3(a)(12).

Dated: March 20, 2019.

Vanessa A. Countryman,
Acting Secretary.

[FR Doc. 2019-05809 Filed 3-22-19; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85367; File No. SR-NYSE-2019-09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rules 104 and 36 To Require and Facilitate Routine Communications Between Designated Market Makers (“DMMs”) and Designated Representatives of Listed Issuers

March 20, 2019.

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 March 8, 2019, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 104 and 36 to require and facilitate routine communications between Designated Market Makers (“DMMs”) and designated representatives of listed issuers. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend [sic] 104 (Dealings and Responsibilities of DMMs) and Rule 36 (Communication Between Exchange and Members’ Offices) to require and facilitate routine DMM communication with designated representatives of listed issuers.

Proposed Rule Change

As described below, the Exchange proposes to amend Rule 104 to require DMM units to communicate with designated individuals at each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered and would describe how the communication requirement can be met. The Exchange also proposes to amend Rule 36 to facilitate written electronic communications with issuers from the Floor of the Exchange (the “Floor”)⁴ pursuant to proposed Rule 104(l) during specified time periods and subject to certain restrictions.

Rule 104

Rule 104 sets forth the obligations of Exchange DMMs. The Exchange proposes to add a new paragraph (l) to Rule 104 titled “Communication with Issuers of Listed Securities” that would set forth the obligation of DMMs to communicate with their listed issuers.

Proposed Rule 104(l)(1) would provide that, on at least a quarterly basis, each DMM unit must communicate with one or more senior officials of each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered, with the exception of American Depositary Receipts (“ADR”).⁵ The proposed rule would

⁴ Rule 6 defines the Floor as the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.

⁵ ADRs are certificates representing a specified number of shares in non-U.S. issuers that are deposited and issued through U.S. banks. The shares underlying ADRs are primarily listed and traded on non-U.S. markets. The Exchange believes that the purpose for the proposed change is not furthered by requiring DMMs to contact foreign issuers whose ordinary listing is not on the Exchange and therefore proposes to exclude ADRs from the periodic communication requirement.

also provide that the senior official designated by the listed issuer for the proposed contacts must be of the rank of Corporate Secretary or higher and must not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security. The Exchange proposes to provide the senior officials at the issuer with the option to designate an individual to communicate with the DMMs on their behalf by including the clause “or a designee thereof” following “Corporate Secretary or above,” which the Exchange believes would enable issuers to more efficiently manage the communication process. As proposed, the designee would also have to be a person at the issuer who is not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security.

This proposed obligation would be on the DMM units only. DMM units would be required to communicate with the listed issuer contact, but the listed issuer contact would not be required to reciprocate. For example, a DMM unit could meet its obligation by sending an email communication to the listed issuer contact. However, the listed issuer contact would not be obligated to respond to that communication in writing or otherwise.

To address the possibility that a DMM unit may not have contact information for any individuals at a listed issuer, proposed Rule 104(l)(A) would provide that if a DMM unit does not have contact information for a listed issuer, the DMM unit can seek to communicate with the Corporate Secretary most recently named on a public filing by such issuer.

Proposed Rule 104(l)(2) would describe the ways in which the periodic communication requirement set forth in proposed subparagraph (l)(1) can be met. Specifically, proposed subparagraph (l)(2) would provide that the communication requirement may be met by either in-person meetings, telephone calls, or written communications.

The required communications would be explicitly subject to existing restrictions on DMMs. First, as set forth in proposed Rule 104(l)(2)(A), during the required communications, employees of the DMM unit would have to comply with the requirements of Rule 98⁶ with respect to the information that may be shared with the listed issuer

⁶ Rule 98 governs the operation of DMM units and imposes certain restrictions on DMM trading including, among other things, requiring that DMM units to protect against the misuse of Floor-based non-public order information. *See, e.g.*, Rule 98(c)(3).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

contact. Second, as described in proposed Rule 104(l)(2)(B), an employee of a DMM unit may not communicate with a listed issuer contact from the Floor via telephone. However, the Exchange proposes that an employee of a DMM unit would be able to communicate with a listed issuer contact from the Floor using electronic written communications, subject to the requirements and safeguards set forth in proposed Rule 36.31, described below. Finally, proposed Rule 104(l)(2)(C) would provide that DMM units must establish written policies and procedures reasonably designed to ensure that DMMs are in compliance with the requirements of the proposed rule.

Proposed Rule 104(l)(3) would describe the non-regulatory penalties to be imposed if DMMs fail to initiate the required contacts with listed issuers. Specifically, if a DMM unit fails to initiate the required communication with the listed issuer for a single quarter, the Exchange would issue an initial warning letter to the DMM unit. If a DMM unit fails to initiate the required communication with the listed issuer for a two or more quarters, that DMM unit would be ineligible to participate in the allocation process for a minimum of one month following the second quarter of its failure to meet its contact requirement.

The proposed rule is substantively similar to former NYSE Rule 106(a), which provided that “[d]uring each quarter, each Exchange specialist unit shall contact one or more senior officials, of the rank of Corporate Secretary or above, of each company in whose stock specialists associated with the specialist unit are registered.” NYSE Rule 106 was deleted in 2008.⁷ At the time, the Exchange determined that the requirement in former Rule 106 that specialist units make themselves available for contact with their listing companies periodically throughout the year was unnecessary to ensure that listed issuers were informed about trading in their listed securities given the availability of public information and the fact that specialist units had internal departments responsible for communicating with issuers during the trading day.⁸ Following the deletion of Rule 106, the internal departments responsible for communicating with issuers were largely dismantled, and

DMM communications with issuers have become less regular.

Because each listed security is assigned to a single DMM, the Exchange believes that one of the core functions of the DMM units is to maintain regular communications with listed issuers about trading activity in their securities. While DMM firms may no longer be structured as they were when former Rule 106 was in place, DMM units still regularly communicate with their listed issuers. The Exchange proposes to reinstate the mandated interaction between DMMs and listed issuers⁹ because the Exchange believes that this would ensure that a minimum level of communication is occurring between DMM units and all listed issuers. The proposed rule would therefore establish a minimum level of required contacts. The Exchange understands that most DMM units have more frequent communications with their listed issuers.

Rule 36

Rule 36 governs the establishment of telephone or electronic communications connections between the Floor and other locations, which requires Exchange approval. Supplementary Material .31 to Rule 36 (“DMM Electronically Transmitted Written Communications”) permits DMM units to install and maintain certain written electronic communications applications. Specifically, Rule 36.31(a) permits a DMM unit, subject to Exchange approval and the conditions set forth in Rule 36.31, to install and maintain a wired or wireless device capable of sending and receiving written communications electronically through an Exchange-approved connection (a “Permitted Communications Device”).¹⁰ Under Rule 36.31(b), DMM units can connect Floor-based personnel via a Permitted Communications Device to persons with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98, *i.e.*, certain personnel in the off-Floor offices of the DMM unit, the DMM unit’s clearing operations, and persons who are permitted to provide non-trading related services to the DMM unit under Rule 98. Once connected, on-Floor and off-Floor personnel are permitted to use the Permitted Communications Device for two-way written electronic

communications as permitted by Rules 36.30 and 98.

To facilitate the DMM unit’s proposed obligation to maintain regular communications with listed issuers, the Exchange proposes to amend Rule 36.31(b) to permit Floor-based DMM personnel to utilize Permitted Communications Devices for written electronic communications with the listed issuer representative designated under Rule 104(l)(1).

To effectuate this change, the Exchange would replace “shall only permit written electronic communications” before “Permitted Communications Device” in Rule 36.31(b) with “may be used while on the Trading Floor for written electronic communications” and add new subparagraphs (1) and (2).

Proposed Rule 36(b)(1) would reflect the current rule that Permitted Communications Devices may be used for electronic written communications between individuals located at the DMM unit’s post on the Floor and persons with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98.

Proposed Rule 36(b)(2) would reflect the proposed rule that Permitted Communications Devices may be used for written electronic communications with the listed issuer representative designated under proposed Rule 104(l)(1), subject to the content restrictions set forth in that rule as described above and provided that a DMM unit may not use a Permitted Communications Device for this purpose for the periods 9:15 a.m. Eastern Time (“E.T.”) until the security is opened, and again beginning 15 minutes before the scheduled close of trading until the security is closed.

The proposed time restrictions are designed to limit communications between the DMM and listed issuer during the period when a DMM would need to access non-public trading information to facilitate the opening or closing transactions, *i.e.*, the fifteen minutes prior to a security being opened and closed by the DMM.¹¹ The Exchange believes that this proposed bright-line restriction on communications would eliminate any potential for non-public information to be shared by the DMM with a listed

⁷ See Securities Exchange Act Release No. 83540 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR-NYSE-2008-52).

⁸ See *id.*, 73 FR at 65437.

⁹ Former Rule 106 also required, for instance, that the specialist unit makes itself available to the Exchange’s fifteen (15) largest member organizations through required semiannual “off the Exchange Floor” contact. See *id.*

¹⁰ Examples of Permitted Communications Devices include email and instant messaging via a desktop or laptop computer.

¹¹ In connection with opening and closing a security, DMMs have access to non-public order information, specifically, the aggregate amount of specified Reserve Orders that are eligible to participate in the opening and closing transactions. See Rule 104(a)(2) and (3) (specifying that DMMs and DMM unit algorithms have access to aggregate order information in order to comply with their requirement to facilitate openings and closings).

issuer in advance of the opening or closing of trading. The Exchange further believes that the Rule 98 requirements for the DMM to have policies and procedures reasonably designed to protect against the misuse of Floor-based non-public order information would restrict the DMMs from being able to share any non-public information the rest of the trading day.¹²

Finally, the requirements in current Rule 36.31(c) that a DMM unit must maintain records of all written communications sent from or to the DMM via the Permitted Communications Device in accordance with Rule 440 and SEC Rule 17a-4(b)(4)¹³ and in such format as may be prescribed by the Exchange, and the requirement in current Rule 36.31(d) that a DMM's member organization must establish policies and procedures reasonably designed to ensure that use of the Permitted Communications Device is consistent with all SEC rules and Exchange rules, policies and procedures, would remain unchanged.

The Exchange believes that allowing DMM units to use a Permitted Communications Device to communicate with issuers from the Floor is appropriate because the DMM units would continue to be subject to the requirements of Rule 98 and existing restrictions on the use of Permitted Communications Devices.

The proposed rule change would in no way alter the obligations of a DMM unit to meet existing requirements under Rule 98 to, among other things, protect non-public order information and maintain appropriate information barriers in accordance with Rule 98. Because DMM units would continue to be subject to Rule 98, while on the Floor, DMM unit personnel could not use the Permitted Communications Device to communicate with issuers in violation of Rule 98. For example, DMM units would continue to be subject to the provisions of Rule 98 governing restrictions on communications with off-Floor individuals or systems responsible for making trading decisions in related products. The Exchange also believes that prohibiting written electronic communications from the Floor before the open and going into the close further assists DMM units in protecting non-public order information when communicating with issuers from the Floor.

DMM units would also continue to be obligated to program its communications system so that a

Permitted Communications Device would not operate in a manner enabling written electronic communications to or from any location or individual other than as described in proposed amended Supplementary Material .31. Among other things, the DMM unit would be required to program its communications system to ensure that messages cannot be forwarded by DMM Floor personnel to anyone at the issuer with whom Floor personnel are not permitted to communicate.

Finally, the Exchange believes that use of auditable written electronic communications as the only permitted method for DMM units to communicate with issuers from the Floor and the related retention requirements would facilitate and enhance the Exchange's existing regulatory program. In particular, the Exchange would be able to review the email system operating the connections between the Floor and the issuer, the related written supervisory procedures, and both the content of, and participants in, any written communications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to 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.

In particular, the Exchange believes that the proposed requirement that DMMs maintain regular contact with listed issuers would foster cooperation and coordination with persons engaged in facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting a better understanding of the needs of listed issuers and fostering communications among DMMs and listed issuers. The Exchange believes that routine and regular contacts between DMMs and listed issuers should be encouraged and will help to foster an understanding of the DMM function, the operations of the Exchange market, and the markets that are maintained in the listed issuers' securities, as well as assisting DMMs to

better perform their functions, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Moreover, the Exchange believes that excluding ADRs from the proposed requirement is not inconsistent with this goal because the shares underlying ADRs are not primarily listed and traded on the Exchange. The Exchange also believes that the proposed amendments to Rule 36 support the mechanism of free and open markets by facilitating DMM communications with issuers from the Floor during the trading day, subject to the safeguards described above.

Further, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and would be consistent with the public interest and the protection of investors because of the numerous safeguards surrounding the manner and form in which DMMs can communicate with listed issuers proposed for inclusion in Rules 104 and 36. The proposed safeguards would include:

- Requiring communications to occur with a very senior official designated by the listed issuer;
- requiring that the official designated by the listed issuer not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security;
- requiring employees of the DMM unit to comply with the requirements of Rule 98 with respect to the information that may be shared with the listed issuer contact during the required communications, including written electronic communications from the Floor;
- preventing employees of the DMM unit from communicating with a listed issuer contact from the Floor via telephone;
- requiring that, while on the Floor, employees of the DMM unit only communicate with a listed issuer contact in written electronic form using a monitored Permitted Communications Device; and
- prohibiting written electronic communications from the Floor with the listed issuer contact during the busiest part of the trading day from 9:15 a.m. E.T. until the security is opened and beginning fifteen minutes before the scheduled close of trading until the security is closed.

The Exchange believes that these proposed safeguards establish an appropriate regulatory framework for supervising and monitoring mandated DMM communications with listed

¹² See Rule 98(c)(3)(A).

¹³ See Rule 440 (Books and Records) & 17 CFR 240.17a-4(b)(4).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

issuers consistent with the objectives of Section 6(b)(5) of the Act.¹⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change relates to how DMMs communicate with their listed issuers and proposes no change for other market participants. In addition, the Exchange does not believe that the proposed changes will impose any competitive burden because DMMs will operate in the same manner, including from the Floor, when communicating with issuers.

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-NYSE-2019-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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-NYSE-2019-09 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05698 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 28, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

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 Roisman, 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;
- Litigation matters; 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 Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: March 21, 2019.

Vanessa A. Countryman,
Acting Secretary.

[FR Doc. 2019-05810 Filed 3-22-19; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85371; File No. SR-MIAX-2019-13]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 20, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 8, 2019, Miami International Securities Exchange LLC ("MIAX

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to modify the manner in which the Exchange assesses its Fees for Customer Orders Routed to Another Options Exchange (“Routing Fees”) in order to align its Routing Fees and its Routing Fees rule text to the Routing Fees and Routing Fees rule text adopted by the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX PEARL”),³ and to make a non-substantive technical correction.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange assesses a Routing Fee to market participants on all Public Customer⁴ orders routed to and executed on an away market that is equal to the amount charged by the away market to which such orders were routed and executed. The Exchange also pays any rebate offered by an away market. Such market participants are also currently assessed a Fixed Fee Surcharge of \$0.10 per contract by the Exchange, which is added to the fee charged, or netted against the rebate paid, by an away market. The Fixed Fee Surcharge applies to both Mini and Standard Option contracts.

The Exchange proposes to modify the manner in which it assesses its Routing Fees. Specifically, the Exchange proposes to assess the amount of the applicable fee, if any, based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Pilot Program⁵ (“Penny classes”) or an order for standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”) (or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the Routing Fees assessment practice currently utilized by the Exchange’s affiliate, MIAX PEARL. The purpose of the proposed rule change is to align the Routing Fees and Routing Fees rule text of the Exchange to the Routing Fees and Routing Fees rule text adopted by the Exchange’s affiliate, MIAX PEARL.⁶

The Exchange also proposes to assess Routing Fees to all market participants, not just Public Customers. The Exchange proposes to assess Priority Customers a lower Routing Fee than its Public Customers. The purpose of assessing Routing Fees to all market participants including Priority Customers is to recoup the costs that the Exchange incurs as a result of all orders which are routed away from the Exchange, not just those incurred from Public Customer orders.

The Exchange proposes to assess Routing Fees to all market participants according to the following table:

Description	Fees
Routed, Priority Customer, Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq MRX, Nasdaq PHLX (except SPY), Nasdaq BX Options	\$0.15
Routed, Priority Customer, Penny Pilot, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald, MIAX PEARL	0.65
Routed, Priority Customer, Non-Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq ISE, Nasdaq MRX, Nasdaq PHLX, Nasdaq BX Options	0.15
Routed, Priority Customer, Non-Penny Pilot, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX PEARL, MIAX Emerald, Nasdaq GEMX, NOM	1.00
Routed, Public Customer that is not a Priority Customer, Penny Pilot, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX PEARL, MIAX Emerald, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: NYSE American, Cboe, Nasdaq PHLX, Nasdaq ISE, Cboe EDGX Options	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: Cboe C2, BOX, Nasdaq MRX, Nasdaq BX Options, NOM, MIAX PEARL, MIAX Emerald	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX ..	1.25

³ See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10); 82017 (November 6, 2017), 82 FR 52342 (November 13, 2017) (SR-PEARL-2017-36). See also SR-PEARL-2019-06 (Proposal to amend the routing fee table, filed on February 28, 2019).

⁴ “Public Customer” refers to all Members of the Exchange other than Priority Customers. “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100. “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day

on average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100.

⁵ See Securities Exchange Act Release No. 84864 (December 19, 2018), 83 FR 66778 (December 27, 2018) (SR-MIAX-2018-38) (extending the Penny Pilot Program from December 31, 2018 to June 30, 2019).

⁶ See *supra* note 3.

In determining its Routing Fees, the Exchange takes into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs,⁷ administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the Routing Fees specified in the Fee Schedule. This Routing Fees structure is not only similar to the Exchange's affiliate, MIAX PEARL, but is also comparable to the structures in place at other exchanges, such as Cboe BZX Options Exchange ("BZX Options").⁸ The BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's origin type and whether it is a Penny or Non-Penny Pilot class. The Exchange is proposing a similar structure but with 8 different exchange groupings, based on the exchange, order type, and option class; like that of MIAX PEARL. The Exchange believes that, by having the same Routing Fees structure used by MIAX PEARL, with more groupings, it will offer the Exchange greater precision in covering its costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute that corresponding contract at that corresponding exchange. For example, to execute a Priority Customer order in a Penny Pilot symbol at NYSE American costs the Exchange approximately \$0.15 a contract. Since this is also the approximate cost to execute that same order at BOX, the Exchange is able to group NYSE American and BOX together in the same grouping. The Exchange notes that in determining the appropriate groupings, the Exchange considers the transaction fees and rebates assessed by away markets, and groups exchanges together that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the Routing Fees table. The Exchange believes that the Exchange's

current structure of simply passing on the actual charge plus a mark-up can be administratively burdensome, particularly when multiple, third-party, unaffiliated routing broker-dealers are used to route and execute the orders at the away market. This is because the routing broker-dealers have different billing policies and practices, and it often can take several hours per month reconciling trades and bills at the end of each month. By utilizing the structure proposed by the Exchange which is currently used by MIAX PEARL, the Exchange will know immediately the cost of the execution and it can eliminate the administratively burdensome month end reconciliation process, as well as provide more certainty and transparency for execution costs to its Members for the execution of orders that are routed to away markets. Further, those Members which are Members of both the Exchange and MIAX PEARL will be assessed Routing Fees in the same manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the two exchanges for those Members.

Additionally, the Exchange proposes to amend the title of Section (1)(c) of the Fee Schedule to remove the words "and Rebate" from the title. The Exchange notes that the title of the Section currently reads "Fees and Rebates for Customer Orders Routed to Another Options Exchange." The routing fee table as proposed does not contain any net rebates, therefore, as amended, the Exchange proposes for the title of the Section to now read "Fees for Customer Orders Routed to Another Options Exchange." The Exchange believes this will add clarity and precision with respect to the structure of its Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹¹ 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed modifications in the Fee Schedule to the Routing Fees furthers the objectives of Section 6(b)(4) of the Act and are equitable and reasonable and not unfairly discriminatory because they will apply the same manner to all Members that are subject to Routing Fees. The Exchange believes the proposed Routing Fees are equitable and reasonable since they align the Exchange's manner of assessing its Routing Fees with that of its affiliate, MIAX PEARL, and those Members which are Members of both the Exchange and MIAX PEARL will be assessed Routing Fees in the same manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the two exchanges for those Members.

The Exchange believes that the proposed Routing Fees furthers the objectives of Section 6(b)(5) of the Act and are designed to promote just and equitable principles of trade and are not unfairly discriminatory because they seek to recoup costs that are incurred by the Exchange when routing orders to away markets on behalf of Members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange primarily include transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs associated with routing orders. The Exchange believes that the proposed Routing Fees would better enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market. The Exchange believes the proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Rules. It is in the public

⁷ The OCC amended its clearing fee from \$0.01 per contract side to \$0.02 per contract side. See Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05).

⁸ This is similar to the methodologies utilized by BZX Options in assessing Routing Fees. See Cboe BZX Options Exchange Fee Schedule under "Fee Codes and Associated Fees".

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

interest for rules to be accurate and concise so as to eliminate the potential for confusion. By utilizing the structure proposed by the Exchange, the Exchange will know immediately the cost of the execution and it can eliminate the administratively burdensome month end reconciliation process, as well as provide more certainty and transparency for execution costs to its Members for the execution of orders that are routed to away markets. Further, those Members which are Members of both the Exchange and MIAX PEARL will be assessed Routing Fees in the same manner which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the two exchanges for those Members.

Further, the Exchange believes that modifying the manner in which it assesses its Routing Fees by grouping exchanges together that assess transaction fees and rebates for routed orders within a similar range is reasonable and not unfairly discriminatory. Specifically, the Exchange believes that the Exchange's current structure of assessing a Fixed Fee Surcharge of \$0.10 per contract by the Exchange, which is added to the fee charged, or netted against the rebate paid, by an away market can be administratively burdensome, particularly when multiple, third-party, unaffiliated routing broker-dealers are used to route and execute the orders at the away market. This is because the routing broker-dealers have different billing policies and practices, and it often can take several hours per month reconciling trades and bills at the end of each month. By utilizing the structure proposed by the Exchange which is currently used by MIAX PEARL, the Exchange will know immediately the cost of the execution and it can eliminate the administratively burdensome month end reconciliation process, as well as provide more certainty and transparency for execution costs to its Members for the execution of orders that are routed to away markets. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate passing through any rebate amount (that is, netting the rebate against the Exchange's \$0.10 charge), as the amount of any such rebate was negligible. The Exchange notes that because the amount of volume that the Exchange routes to away markets is de minimis, the Exchange does not receive the higher rebate amounts offered in the higher tiers of the away markets. Therefore, eliminating that rebate is reasonable

because the amount was immaterial. Further, those Members which are Members of both the Exchange and MIAX PEARL will be assessed Routing Fees in the same manner, which the Exchange believes will minimize any confusion as to the method of assessing Routing Fees between the two exchanges for those Members. Additionally, the Exchange notes that it will continue to monitor the transaction fees and rebates assessed by the away market to determine the appropriate exchange groupings within which to group the away markets.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower routing fees to Priority Customer orders than to Public Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The routing fees for Priority Customer orders are based on the fees charged by the away market for the execution of such orders, therefore it is reasonable and appropriate for the routing fees to be lower than the routing fees for Public Customer orders, as this is the fee construct at the away markets.

Lastly, the Exchange believes that the proposed non-substantive, technical correction furthers the objectives of Section 6(b)(4) of the Act and 6(b)(5) of the Act in that the change is equitable and reasonable and not unfairly discriminatory because this proposal is intended only as a technical correction to update to the title of Section (1)(c) of the Fee Schedule to accurately reflect that this Section is a fee and not a rebate, which does not have any substantive impact on the Routing Fees. The Exchange believes making this technical correction promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because it would eliminate any potential confusion as a result of wording that is no longer applicable. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed Routing Fees are similar in structure to those assessed by

its affiliate, MIAX PEARL, and are similar in structure and are comparable to routing fees charged by other options exchanges.¹² The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange. Further, the Exchange does not believe that the technical correction to the routing fee table will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal is intended to eliminate any potential confusion as a result of wording that is no longer applicable. In doing so, the proposed rule change will also serve to promote clarity and consistency in the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ and Rule 19b-4(f)(2)¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹² See *supra* note 8.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2019-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2019-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-13 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-05701 Filed 3-25-19; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15892 and #15893; Georgia Disaster Number GA-00111]

Administrative Declaration of a Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 03/18/2019.

Incident: Severe Weather System.
Incident Period: 03/03/2019.

DATES: Issued on 03/18/2019.

Physical Loan Application Deadline Date: 05/17/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 12/18/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Grady, Talbot.

Contiguous Counties:

Georgia: Chattahoochee, Decatur, Harris, Marion, Meriwether, Mitchell, Muscogee, Taylor, Thomas, Upson.

Florida: Gadsden, Leon.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15892 B and for economic injury is 15893 O.

The States which received an EIDL Declaration # are Georgia, Florida. (Catalog of Federal Domestic Assistance Number 59008)

Dated: March 18, 2019.

Linda E. McMahon,
Administrator.

[FR Doc. 2019-05762 Filed 3-25-19; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 10702]

30-Day Notice of Proposed Information Collection: Affidavit of Identifying Witness

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to April 25, 2019.

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:* Affidavit of Identifying Witness.
- *OMB Control Number:* 1405-0088.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).

¹⁵ 17 CFR 200.30-3(a)(12).

- *Form Number:* DS-0071.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 50,600.
- *Estimated Number of Responses:* 50,600.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 4,217 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain 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 Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. It is used by Passport Services to collect information for the purpose of establishing the identity of the applicant. This affidavit is completed by the identifying witness when the applicant is unable to establish his or her identity to the satisfaction of a person authorized to accept passport applications.

Methodology

The Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. Due to legislative mandates, Form DS-0071 is only available at acceptance facilities, passport agencies, and U.S. embassies and consulates. This form must be completed and signed in the presence of

an authorized Passport Agent, Acceptance Agent, or Consular Officer.

Rachel M. Arndt,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2019-05726 Filed 3-25-19; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; Westover Metropolitan Airport, Chicopee, Massachusetts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Westover Municipal Development Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979. On March 7, 2019 the New England Region Airports Division Manager approved the Noise Compatibility Program under Part 150. On November 7, 2018, the FAA had determined the noise exposure maps submitted by the Westover Municipal Development Corporation were in compliance with applicable requirements of Part 150.

DATES: The effective date of the FAA's approval of the Westover Metropolitan Airport noise compatibility program is March 7, 2019.

FOR FURTHER INFORMATION CONTACT:

Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, ANE-600, 1200 District Avenue, Burlington MA 01803, telephone (781) 238-7613.

SUPPLEMENTARY INFORMATION:

Authority: 49 U.S.C. 47501-47510; 14 CFR part 150

This notice announces that the FAA has given its overall approval to the Westover Metropolitan Airport noise compatibility program, effective March 7, 2019.

Under Section 104 (a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the

area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are

eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Westover Municipal Development Corporation previously submitted to the FAA noise exposure maps and associated documentation produced during the noise compatibility planning study. The Westover Metropolitan Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 7, 2018. Notice of this determination was published in the **Federal Register** December 6, 2018.

The Westover Metropolitan Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport. The Westover Municipal Development Corporation requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104 (b) of the Act. The FAA began its review of the program on November 2, 2018, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained a few changes to noise mitigation measures in the Noise Compatibility Program. Two measures (relating to subdivision regulations and a pilot awareness program) were not recommended for approval and the FAA concurred. One measure (relating to monitoring of nighttime operations) had been only partly approved previously, is now approved. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The New England Region Airports Division Manager therefore approved the overall program on March 7, 2019. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Westover Metropolitan Airport.

Issued in Burlington, Massachusetts on March 7, 2019.

Gail Lattrell,

Acting Manager, Airports Division, FAA New England Region.

[FR Doc. 2019-05755 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Tacoma Dome Link Extension, King and Pierce Counties, Washington

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FTA and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare an EIS to evaluate the benefits and impacts of the proposed Tacoma Dome Link Extension (TDLE), a light rail transit extension project. The project would improve public transit service between the Federal Way Transit Center in Federal Way, King County and the Tacoma Dome Station in Tacoma, Pierce County. It would respond to a growing number of transportation and community needs identified in the agency's regional transit system plan, Sound Transit 3 (ST3). The project would also cross the lands of the Puyallup Tribe of the Puyallup Reservation (Puyallup Tribe of Indians).

FTA and Sound Transit will prepare the EIS in accordance with the National Environmental Policy Act (NEPA), FTA environmental regulations, Fixing America's Surface Transportation Act (FAST Act), and Washington's State Environmental Policy Act (SEPA). This Notice initiates formal scoping for the EIS, provides information on the nature of the proposed transit project, invites participation in the EIS process, provides information about the purpose and need for the proposed transit project, includes general information on the range of alternatives being considered for evaluation in the EIS, and identifies potential environmental effects to be considered. It also invites comments from interested members of the public, tribes, and agencies on the scope of the EIS and announces upcoming public scoping meetings. Alternatives being considered for evaluation include a No-Build and various build alternatives to develop light rail in the TDLE corridor. The alternatives were developed through a

local planning process including a Regional Transit Long-Range Plan, a regional system plan of transit investments (ST3), and a SEPA early scoping and alternatives development process specific to the TDLE corridor. The results of SEPA early scoping and alternatives planning, as well as other background information, are summarized in the Tacoma Dome Link Extension Scoping Information Report, which is available at Sound Transit's office located at 401 S Jackson Street, Seattle, WA 98104-2826, on the project website: www.soundtransit.org/tdlink, or by contacting the project line at (206) 903-7118.

DATES: The public scoping period will begin on the date of publication of this Notice and will continue through May 1, 2019 or 30 days from the date of publication, whichever is later. Please send written comments on the scope of the EIS, including the draft purpose and need statement, the alternatives to be considered in the EIS, the environmental and community impacts to be evaluated, and any other project-related issues, to the Sound Transit address listed in **ADDRESSES** below.

Public scoping meetings will be held at the times and locations indicated in **ADDRESSES** below. Sound Transit and FTA will accept written comments at those meetings, along with comments via mail and online, during the duration of the comment period. There is also an opportunity to give verbal comments that will be recorded by a court recorder at the meetings. FTA and Sound Transit have also scheduled a meeting to receive comments from agencies and tribes who have an interest in the proposed project on April 16, 2019. Invitations to the agency and tribal scoping meeting will be sent to appropriate federal, tribal, state, and local governmental units.

ADDRESSES: Written comments on the scope of the EIS must be postmarked by May 1, 2019 or 30 days from the publication of this Notice, whichever is later. Please send comments to: TDLE Project, c/o Elma Borbe, Senior Environmental Planner, Sound Transit, 401 S. Jackson Street, Seattle, WA 98104-2826, or by email to TDLEscoping@soundtransit.org. Comments will also be accepted at the public scoping meetings that will be held at:

1. April 16, 2019, 6:00 p.m.–8:00 p.m., Fife Community Center, 2111 54th Avenue E, Fife, WA.

2. April 17, 2019, 6:00 p.m.–8:00 p.m., Tacoma Convention Center, 1500 Commerce Street, Tacoma, WA.

3. April 23, 2019, 6:00 p.m.–8:00 p.m., Federal Way Performing Arts and Event Center, 31510 Pete von Reichbauer Way S, Federal Way, WA.

All public meeting locations are accessible to persons with disabilities. For information in alternative formats, call 1–800–201–4900/TTY Relay: 711 or email accessibility@soundtransit.org.

Information about the proposed project, the alternatives development process, scoping, and the EIS process will be available at the scoping meetings, at Sound Transit offices, on the project website at www.soundtransit.org/tmlink, or by contacting the project line at (206) 903–7118. An online open house is also available to submit comments at <http://tmlink.participate.online>.

FOR FURTHER INFORMATION CONTACT:

Mark Assam, FTA Environmental Protection Specialist, (206) 220–4465 or Elma Borbe, Sound Transit Senior Environmental Planner, (206) 398–5445.

SUPPLEMENTARY INFORMATION:

Background. NEPA “scoping” (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the light rail alignment alternatives’ significant issues that will be examined in detail in the EIS, while simultaneously limiting consideration and development of issues that are not truly significant. The NEPA scoping process should identify potentially significant environmental impacts caused by the project and that give rise to the need to prepare an EIS; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement. The EIS must be focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations—“to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives . . . [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.” Executive Order 11991, of May 24, 1977. Transit projects may also generate environmental benefits, which should also be highlighted; the EIS process should draw attention to positive impacts, not just negative.

The Proposed Project. Sound Transit is proposing to expand Link light rail transit service from the Federal Way Transit Center to the Tacoma Dome Station area. The project corridor is

approximately 10 miles long, with four proposed stations and two park-and-rides. The representative project is part of the ST3 Plan of regional transit system investments, funding for which was approved by voters in the region in 2016. The ST3 Plan is available on Sound Transit’s website at: www.soundtransit3.org/document-library.

Purpose of and Need for the Project.

The Purpose and Need statement establishes the basis for developing and evaluating a range of reasonable alternatives for environmental review and assists with the identification of a Preferred Alternative. The purpose of the TDLE project is to expand the Link light rail system from the Federal Way Transit Center to the Tacoma Dome Station area, to make appropriate community investments to improve mobility, and to increase capacity and connectivity for regional connections in order to:

- Provide high-quality rapid, reliable, and efficient light rail transit service to communities in the project corridor, as defined through the local planning process and reflected in the ST3 Plan (Sound Transit 2016).

- Improve regional mobility by increasing connectivity and capacity in the TDLE corridor from the Federal Way Transit Center to the Tacoma Dome Station area to meet projected transit demand.

- Connect communities of Federal Way, Milton, Fife, Tacoma, and the Puyallup Tribe of Indians to regional centers and destinations on the regional high-capacity transit (HCT) system as described in adopted regional and local land use, transportation, and economic development plans and Sound Transit’s Regional Transit Long-Range Plan (Sound Transit 2014).

- Implement a system that is technically and financially feasible to build, operate, and maintain.

- Expand mobility for the corridor and region’s residents, which include transit-dependent, low-income, and minority populations.

- Encourage equitable and sustainable urban growth in station areas through support of transit oriented development and multimodal integration in a manner that is consistent with local land use plans and policies, including Sound Transit’s Transit Oriented Development and Sustainability policies.

- Encourage convenient and safe nonmotorized access to stations such as bicycle and pedestrian connections consistent with Sound Transit’s System Access Policy.

- Preserve and promote a healthy environment and economy by minimizing adverse impacts on the natural, built, and social environments.

The project is needed because:

- Chronic roadway congestion on Interstate 5 (I–5) and State Route 99 (SR 99) — two primary highways connecting communities along the corridor — delays today’s travelers, including those using transit, and degrades the reliability of bus service traversing the corridor, particularly during commute periods.

- These chronic, degraded conditions are expected to continue and worsen as the region’s population and employment grows.

- Puget Sound Regional Council (PSRC), the regional metropolitan planning organization, and local plans call for HCT in the corridor consistent with VISION 2040 (PSRC 2009) and Sound Transit’s Regional Transit Long-Range Plan (Sound Transit 2014).

- South King and Pierce counties citizens and communities, including transit-dependent residents and low-income or minority populations, need long-term regional mobility and multimodal connectivity as called for in the Washington State Growth Management Act.

- Regional and local plans call for increased residential and/or employment density at and around HCT stations, and increased options for multimodal access.

- Environmental and sustainability goals of the state and region, as established in Washington state law and embodied in PSRC’s VISION 2040 and 2018 Regional Transportation Plan, include reducing greenhouse gas emissions by decreasing vehicle miles traveled.

Proposed Alternatives. A range of light rail transit build alternatives has been identified for the TDLE project, as well as a No-Build Alternative, as required under NEPA, that serves as a baseline against which to assess the impacts of the proposed alternatives. The mode and corridor served for the proposed project were identified through the years-long planning process for the Sound Transit Regional Transit Long-Range Plan and ST3 Plan. The range of light rail transit alternatives was developed through an alternatives development process, which built off of the Regional Transit Long-Range Plan and ST3 planning work. The planning and alternatives development processes included technical analysis, public engagement, and input from affected local jurisdictions. Sound Transit developed an initial range of alternatives from agency and public

input during the SEPA early scoping process (April 2 through May 3, 2018). The project Elected Leadership Group (ELG), a comprehensive group of elected officials that represent the service corridor, recommended how to narrow and refine these alternatives based on additional analysis and community, agency, and tribal input. Consistent with 23 CFR part 450.318, FTA is relying on the results of these local planning processes to inform the mode, corridor, and range of reasonable alternatives to be evaluated during the environmental process.

FTA and Sound Transit invite comments on these alternatives. The input received during the scoping period will help FTA and Sound Transit identify alternatives to evaluate in the Draft EIS. After scoping concludes, the Sound Transit Board is expected to consider the scoping comments received and then act on a motion addressing the purpose and need for the project, the scope of environmental review, and identifying the preferred alternative and other alternatives to be considered in the Draft EIS.

No-Build Alternative. The No-Build Alternative reflects the existing transportation system plus the transportation improvements included in PSRC's Transportation Improvement Program.

Light Rail Transit Alternatives. The full-length project connecting from Federal Way to the Tacoma Dome Station is approximately 10 miles long and includes four stations: South Federal Way, Fife, East Tacoma, and the Tacoma Dome. FTA and Sound Transit may also examine several design options and potential minimal operable segments for the proposed alternatives. Information about the proposed project, the alternatives development process, scoping, and the EIS process will be available at the scoping meetings, at Sound Transit offices, on the project website: <http://www.soundtransit.org/tmlink>, or by contacting the project line at (206) 903-7118. For purposes of this Notice, the project can be generally described as follows:

Based on planning efforts to date, the alternatives evaluated for the project follow the I-5 corridor, the SR 99 corridor, or a combination of the two corridors, and include four stations and two park-and-rides located at the South Federal Way and Fife stations. The project begins just south of the Federal Way Transit Center and includes three general alternative routes in South Federal Way: I-5, Enchanted Parkway, and SR 99. The I-5 alternatives run parallel to the west side of I-5 with station options in the vicinity of S 356th

Street. The Enchanted Parkway alternatives curve from I-5 to Enchanted Parkway between S 344th Street and S 359th Street with station options in the vicinity of S 352nd Street. The SR 99 alternatives use either SR 99 or a short stretch of I-5 to reach an SR 99 station near S 348th Street before continuing south along SR 99, or returning to the west side of I-5. Just south of Porter Way, I-5 and SR 99 make a 90-degree curve to the west near the city limits for Milton and Fife. Due to the topography and a new interchange with SR 167 that the Washington State Department of Transportation plans to start constructing in 2019, all alternatives converge along the SR 99 corridor as they enter Fife. The station and park-and-ride site options in Fife are generally located north of SR 99 between 59th Street E and 54th Street E. West of 54th Street E, the alternatives follow either the south side of the SR 99 corridor or the north side of the I-5 corridor. All of the alternatives are anticipated to cross the Puyallup River on a new bridge to the north of I-5. From East Tacoma to the Tacoma Dome Station area, the alternatives would curve slightly north to follow either E 26th Street, E 25th Street, or Puyallup Avenue. There is also an option for an alignment to follow E 26th Street or E 27th Street to a station site at the Tacoma Dome near East D Street. The East Tacoma station location is anticipated to be a block east or west of Portland Avenue E. The Tacoma Dome light rail station would be located in the vicinity of East G Street or East D Street.

The build alternatives would also include access enhancements such as transit-related roadway, bicycle, and pedestrian improvements around station areas, and the Puyallup River Bridge crossing. These improvements may be eligible for federal funding and could be part of the transit project or constructed as part of a joint effort with agency partners.

Possible Adverse Effects. Consistent with NEPA, FTA and Sound Transit will evaluate, with input from the public, tribes, and agencies, the potential impacts of the alternatives on the natural, built, and social environments. Likely areas of investigation include transportation (including navigable waterways), land use and consistency with applicable plans, land acquisition and displacements, socioeconomic impacts, park and recreation resources, historic and cultural resources, environmental justice, visual and aesthetic qualities, air quality, noise and vibration, hazardous materials, energy use, safety and security, water resources, floodplains,

and ecosystems, including threatened and endangered species, and potential marine mammals. The EIS will evaluate the impacts of short-term construction, long-term operations, and indirect and cumulative conditions. The EIS will also propose measures to avoid, minimize, or mitigate significant adverse impacts.

In accordance with FTA policy and regulations, FTA and Sound Transit will comply with all federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process.

Roles of Agencies and the Public. NEPA, and FTA's regulations for implementing NEPA, call for public involvement in the EIS process. FTA and Sound Transit therefore invite federal and non-federal agencies to participate in the NEPA process as "cooperating" or "participating" agencies. FTA will also initiate government-to-government consultation with tribes and will invite them to participate in the process.

Any agency or tribe interested in the project that does not receive such an invitation should promptly notify the Sound Transit Senior Environmental Planner identified above under

ADDRESSES.

FTA and Sound Transit will prepare a draft Coordination Plan guiding agency, tribe, and public involvement. Interested parties will be able to review this draft Coordination Plan at the project website: <http://www.soundtransit.org/tmlink>. The Plan will identify the project's coordination approach and structure, detail the major milestones for agency and public involvement, and include an initial list of interested agencies and organizations.

Combined FEIS and Record of Decision. Under 23 U.S.C. 139, FTA is to combine the Final EIS and Record of Decision if practicable. However, because the EIS will be a joint document meeting both NEPA and SEPA requirements, and because SEPA requires a waiting period between the FEIS and decisions about the project, FTA and Sound Transit have determined that a combined FEIS and Record of Decision is not practicable.

Paperwork Reduction. The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, FTA limits as much as possible the distribution of complete sets of printed environmental documents. Accordingly, unless a

specific request for a complete printed set of environmental documents is received before the document is printed, FTA and Sound Transit will distribute the executive summary of the environmental document that will include a compact disc of the complete environmental document and a link to the project website where it can be accessed online. A complete printed set of the environmental documentation will be available for review at Sound Transit's offices and local libraries; an electronic copy of the complete environmental document will also be available on Sound Transit's project website.

Linda M. Gehrke,
Regional Administrator.

[FR Doc. 2019-05721 Filed 3-25-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2018-0042]

Pipeline Safety: Request for Special Permit; Golden Pass LNG Terminal, LP

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comment on a request for special permit, seeking relief from compliance with certain requirements in the Federal Pipeline Safety Regulations (PSRs). At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by April 25, 2019.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Website:* <http://www.Regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

Note: There is a privacy statement published on <http://www.Regulations.gov>. Comments, including any personal information provided, are posted without changes or edits to <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202-366-0113, or email at kay.mciver@dot.gov.

Technical: Mr. Thach Nguyen by telephone at 909-262-4464, or by email at Thach.d.Nguyen@dot.gov.

SUPPLEMENTARY INFORMATION: On March 28, 2018, PHMSA received a special permit request from Golden Pass LNG Terminal, LP (GPLNG) to deviate from the PSRs in 49 Code of Federal Regulations, part 193, subpart G for the following provisions: Subpart G Maintenance—§§ 193.2603(a) and (b), 193.2607, 193.2609, 193.2619(c) and (e), 193.2631, and 193.2635(e).

GPLNG proposes to create a hydrocarbon-free environment in the existing regasification terminal or Brownfield facilities prior to construction of the new liquefaction/export project to maximize safety of the interconnection construction. Existing equipment will be at ambient temperature, purged of all hydrocarbons and displaced with nitrogen. In some cases, containment will be broken for modification. The main gas supply pipeline will be blinded off from the Brownfield site. A hydrocarbon-free environment will allow new equipment/facilities to be interconnected to existing equipment and allow certain existing equipment to be modified under safer conditions. While the GPLNG Terminal is out of service and purged free of hazardous fluid, GPLNG seeks to be relieved from performing the maintenance, inspection, and testing activities required in §§ 193.2603(a) and (b), 193.2607, 193.2609, 193.2619(c) and (e), 193.2631, and 193.2635(e). Prior to

bringing the GPLNG Terminal back to service, GPLNG will carry out its recommissioning/restart plan, and PHMSA will perform inspections to verify that the LNG facility equipment and components are fully restored to their original and fully compliant functions.

The GPLNG Terminal is located on the southern shore of the Sabine-Neches Waterway in Jefferson County, Texas, approximately ten (10) miles south of Port Arthur, Texas, and two (2) miles north of Sabine Pass, Texas. Since June 2012, the terminal has maintained a warmed state, where all LNG has been removed, but equipment remains in a state of readiness that includes methane vapors. The GPLNG Terminal consists of two (2) berths, five (5) LNG storage tanks, and a regasification system. All associated piping, valves and pumps will be made hydrocarbon free in accordance with § 193.2517 and American Gas Association's Purging Principles and Practices (incorporated by reference, see § 193.2013).

The proposed special permit conditions and Draft Environmental Assessment (DEA) for the Golden Pass LNG facility are available at <http://www.Regulations.gov> for public review and comment. We invite interested persons to review and submit comments on the special permit request, DEA, and other background materials in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

Issued in Washington, DC, on March 21, 2019, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2019-05713 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-2019-0015]

Pipeline Safety: Request for Special Permit; Gulf South Pipeline Company, LP

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to seek public comments on a request for a special permit, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by April 25, 2019.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Website:* <http://www.Regulations.gov>. This site allows the public to enter comments on any

Federal Register notice issued by any agency.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

Note: Privacy Act Statement: There is a privacy statement published at <http://www.Regulations.gov>. Comments, including any personal information provided, are posted without changes or edits to <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202-366-0113, or email at kay.mciver@dot.gov.

Technical: Mr. Steve Nanney by telephone at 713-272-2855, or email at Steve.Nanney@dot.gov.

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from Gulf South Pipeline Company, LP, (GSPC) to deviate from the federal pipeline safety regulations in 49 CFR 192.611, for one segment of 30-inch diameter, Index 330 Pipeline, located in St. Mary Parish, Louisiana, where the class location has changed from a Class 1 location to a Class 3 location. The application requests a new permit to operate the existing Class 1 pipe in the new Class 3 location for the segment from survey station 527+87 to 567+51 (3964 feet).

The proposed special permit inspection area extends from survey station 0+03, the start of the Index 330 Pipeline at Bayou Sale Junction, to survey station 1212+28 at the Weeks Island Junction. The Inspection Area is 22.96 miles long (121,558 feet) and extends from St. Mary Parish to Iberia Parish in Louisiana.

In lieu of pipe replacement, GSPC seeks permission to perform alternative risk control activities based on integrity management program principles and requirements.

The special permit request provided by the operator includes a draft environmental assessment (EA), proposed special permit conditions, and location map. These documents are filed at <http://www.Regulations.gov>, in Docket No. PHMSA-2019-0015. We invite interested persons to participate by reviewing the proposed special permit documents and draft EA at <http://www.Regulations.gov>, and by submitting written comments, data or other views. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the comment closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

Issued in Washington, DC, on March 20, 2019, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2019-05678 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2013-0074]

Agency Request for Renewal of Previously Approved Information Collections: Foreign Air Carrier Application for Statement of Authorization, ICR-2106-0035

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of approval of currently approved ICR-2106-0036, Foreign Air Carrier Application for Statement of Authorization. Earlier, a **Federal Register** Notice with a 60-day comment period was published. The agency did not receive any comments to its previous notice.

DATES: Comments on this notice must be received by April 25, 2019.

ADDRESSES: Your comments should be identified by Docket No. DOT-OST-2013-0074 and should be submitted through one of the following methods:

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

- *Office of Management and Budget, Attention:* Desk Officer for U.S. Department of Transportation, Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

- *email:* oira_submission@omb.eop.gov.

- *Fax:* (202) 395-5806.

FOR FURTHER INFORMATION CONTACT:

Darren Jaffe, (202) 366-2512, Office of International Aviation, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W86-441, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2106-0035.

Title: Foreign Air Carrier Application for Statement of Authorization.

Form No.: Form OST 4540.

Type of Review: Extension of a currently approved collection.

Respondents: Foreign Air Carriers.

Number of Respondents: approximately 100.

Estimated Time per Response: 2.25 hours per application.

Total Annual Burden: 1,000 hours.

Abstract: Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR part 212. The form requires basic information regarding the carrier(s) conducting the operation, the party filing the form, the operations being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government. DOT analysts will use the information collected to determine if applications for fifth-, sixth-, and seventh-freedom operations meet the public interest requirements necessary to authorize such applications.

Burden Statement: We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes. Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the Department's T-100 program to provide this information (under this program, carriers are required periodically to compile and report certain traffic data to the Department, as more fully described in the Docket referenced in footnote 1 below). The Bureau of Transportation Statistics (BTS) provide carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data, to be used in making the carriers' T-100 submissions.¹ We estimated that carriers will require 1.25 hours per application.²

¹ The rule-making associated with the T-100 program can be found on the Federal Docket Management System (FDMS) at <http://www.regulations.gov>, in Docket DOT-OST-1998-4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X-50).

² The Office of Aviation Analysis (X-50) estimated that small-carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and

to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland government will afford reciprocity to U.S. carriers seeking authority for the similar fifth-, sixth-, and seventh-freedom operations. Carriers may cite certifications submitted by carriers from the same homeland if that homeland issued such certification within the preceding six-month period. Approximately 100 carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign carrier from any given homeland will expend roughly 4 hours every six-months to obtain certification from its homeland governments.³ We have apportioned 30 minutes to each application to account for the time required to obtain certifications from homeland governments.

We have no empirical data to indicate how much time is required for a person to complete OST Form 4540; however, anecdotal evidence reveals that respondents spend thirty (30) minutes or less completing the form and brief justification. In some cases, respondents spend a limited amount of time, less than ten (10) minutes, reviewing the form before sending it via facsimile or email to the Department. In the interest of providing a conservative estimate so as to not understate the burden hours, we estimate the hour burden for completing OST Form 4540 as thirty (30) minutes.

Issued in Washington, DC, on March 20, 2019.

Brian J. Hedberg,

Director, Office of International Aviation.

[FR Doc. 2019-05729 Filed 3-25-19; 8:45 am]

BILLING CODE 4910-9X-P

report T-100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.

³ Calculation: (4 burden hours per application) × (30 foreign homelands) × (2 requests per year) = 240 annual burden hours. Apportioning 240 annual burden hours equally among an average of 430 applications annually = approximately 30 burden minutes per application.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2019 Supplemental Grant Application Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS is accepting applications from qualified organizations for a part-year Low Income Taxpayer Clinic (LITC) matching grant to provide representation to low income taxpayers and education about taxpayer rights and responsibilities to individuals who speak English as a second language (ESL taxpayers) in certain identified geographic areas. The grant will cover the last five months of the 2019 grant year, from August 1, 2019, through December 31, 2019. The supplemental application period shall run from March 19, 2019, to April 18, 2019.

DATES: An organization applying for part-year funding for the 2019 grant year must submit its application electronically at www.grants.gov. All organizations must use the funding number of TREAS-GRANTS-052019-002, and applications must be filed electronically by 11:59 p.m. (Eastern Daylight Time) on April 18, 2019. The Federal Financial Assistance program number is 21.008. See <https://beta.sam.gov/>.

FOR FURTHER INFORMATION CONTACT: Bill Beard at (949) 575-6200 (not a toll-free number) or by email at beard.william@irs.gov. The LITC Program Office is located at: IRS, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA: LITC, 1111 Constitution Avenue NW, Room 1034, Washington, DC 20224. Copies of the 2019 Grant Application Package and Guidelines, IRS Publication 3319 (Rev. 5-2018), can be downloaded from the IRS internet site at www.irs.gov/advocate or ordered by calling the IRS Distribution Center toll-free at 1-800-829-3676.

SUPPLEMENTARY INFORMATION: In Public Law 116-6, Congress appropriated \$12,000,000 for low income taxpayer clinic grants for fiscal year 2019. Despite the IRS's efforts to foster parity in availability and accessibility in the selection of organizations receiving LITC matching grants and the continued increase in clinic services nationwide, there remain communities that are underrepresented by clinics, and consequently, not all funds

appropriated for the LITC Program have been awarded. For the supplemental application period, the IRS will focus on geographic areas where there is limited or no clinic representation.

The IRS will award up to \$300,000 in funding to qualifying organizations, subject to the limitations of Internal Revenue Code (IRC) section 7526. A qualifying organization may receive a matching grant of up to \$100,000 per year. Organizations currently receiving a grant are not eligible to apply during this supplemental application period. Grant funds may be awarded for start-up expenditures incurred during the grant year. The selection process for these part-year grants may not be complete before the beginning of the application period for the 2020 grant year; thus, applicants for a part-year grant will be expected to submit a separate application for full-year funding for the 2020 grant year during the 2020 grant application period, when announced later this year, with an anticipated opening on May 1, 2019.

Below is a list that contains the identified underserved geographic areas:

Hawaii
Montana
North Dakota
Puerto Rico
West Virginia
Wyoming

Qualifying organizations that provide representation to low income individual taxpayers involved in a tax controversy with the IRS and educate ESL taxpayers about their rights and responsibilities under the IRC are eligible for a grant. An LITC must provide services for free or for no more than a nominal fee. Examples of qualifying organizations include (1) a clinical program at an accredited law, business, or accounting school whose students represent low income taxpayers in tax controversies with the IRS and (2) an organization exempt from tax under IRC section 501(a) whose employees and volunteers represent low income taxpayers in controversies with the IRS and may also make referrals to qualified volunteers to provide representation.

In determining whether to award a grant, the IRS will consider a variety of factors, including: (1) The number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing representation services to low income taxpayers; (4) the quality of the application, including the reasonableness of the proposed budget; (5) the organization's compliance with all federal tax obligations (filing and payment); (6) the organization's compliance with all federal nontax monetary obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies or whether the organization is otherwise excluded from or ineligible for a federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributors and the endowment and resources of the institution sponsoring the organization.

Background

Section 7526 of the IRC authorizes the IRS, subject to the availability of appropriated funds, to award qualified organizations matching grants of up to \$100,000 per year for the development, expansion, or continuation of low income taxpayer clinics. A qualified organization is one that represents low income taxpayers in controversies with the IRS and informs ESL taxpayers of their taxpayer rights and responsibilities and does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred).

A clinic will be treated as representing low income taxpayers in controversies with the IRS if at least 90 percent of the taxpayers represented by the clinic have incomes that do not exceed 250 percent of the federal poverty level. In addition, the amount in

controversy for the tax year to which the controversy relates generally cannot exceed the amount specified in IRC section 7463 (currently \$50,000) for eligibility for special small tax case procedures in the United States Tax Court. The IRS may award grants to qualified organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low income or speak English as a second language by: providing *pro bono* representation on their behalf in tax disputes with the IRS; educating them about their rights and responsibilities as taxpayers; and identifying and advocating for issues that impact these taxpayers.

Selection Consideration

Applications that pass the eligibility screening process will undergo a Technical Evaluation and must receive a minimum score to be considered further. Applications achieving the minimum score will be subject to a Program Office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application are the responsibility of each applicant. Applications may be released in response to Freedom of Information Act requests. Therefore, applicants must not include any individual taxpayer information in the application narrative.

Each application will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

Nina E. Olson,

National Taxpayer Advocate.

[FR Doc. 2019-05681 Filed 3-25-19; 8:45 am]

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FEDERAL REGISTER

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Part II

The President

Executive Order 13864—Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities

Presidential Documents

Title 3—

Executive Order 13864 of March 21, 2019

The President

Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to enhance the quality of postsecondary education by making it more affordable, more transparent, and more accountable. Institutions of higher education (institutions) should be accountable both for student outcomes and for student life on campus.

In particular, my Administration seeks to promote free and open debate on college and university campuses. Free inquiry is an essential feature of our Nation's democracy, and it promotes learning, scientific discovery, and economic prosperity. We must encourage institutions to appropriately account for this bedrock principle in their administration of student life and to avoid creating environments that stifle competing perspectives, thereby potentially impeding beneficial research and undermining learning.

The financial burden of higher education on students and their families is also a national problem that needs immediate attention. Over the past 30 years, college tuition and fees have grown at more than twice the rate of the Consumer Price Index. Rising student loan debt, coupled with low repayment rates, threatens the financial health of both individuals and families as well as of Federal student loan programs. In addition, too many programs of study fail to prepare students for success in today's job market.

The Federal Government can take meaningful steps to address these problems. Selecting an institution and course of study are important decisions for prospective students and significantly affect long-term earnings. Institutions should be transparent about the average earnings and loan repayment rates of former students who received Federal student aid. Additionally, the Federal Government should make this information readily accessible to the public and to prospective students and their families, in particular.

This order will promote greater access to critical information regarding the prices and outcomes of postsecondary education, thereby furthering the goals of the National Council for the American Worker established by Executive Order 13845 of July 19, 2018 (Establishing the President's National Council for the American Worker). Increased information disclosure will help ensure that individuals make educational choices suited to their needs, interests, and circumstances. Access to this information will also increase institutional accountability and encourage institutions to take into account likely future earnings when establishing the cost of their educational programs.

Sec. 2. Policy. It is the policy of the Federal Government to:

(a) encourage institutions to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions;

(b) help students (including workers seeking additional training) and their families understand, through better data and career counseling, that not all institutions, degrees, or fields of study provide similar returns on their investment, and consider that their educational decisions should account for the opportunity cost of enrolling in a program;

(c) align the incentives of institutions with those of students and taxpayers to ensure that institutions share the financial risk associated with Federal student loan programs;

(d) help borrowers avoid defaulting on their Federal student loans by educating them about risks, repayment obligations, and repayment options; and

(e) supplement efforts by States and institutions by disseminating information to assist students in completing their degrees faster and at lower cost.

Sec. 3. *Improving Free Inquiry on Campus.* (a) To advance the policy described in subsection 2(a) of this order, the heads of covered agencies shall, in coordination with the Director of the Office of Management and Budget, take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable Federal laws, regulations, and policies.

(b) “Covered agencies” for purposes of this section are the Departments of Defense, the Interior, Agriculture, Commerce, Labor, Health and Human Services, Transportation, Energy, and Education; the Environmental Protection Agency; the National Science Foundation; and the National Aeronautics and Space Administration.

(c) “Federal research or education grants” for purposes of this section include all funding provided by a covered agency directly to an institution but do not include funding associated with Federal student aid programs that cover tuition, fees, or stipends.

Sec. 4. *Improving Transparency and Accountability on Campus.* (a) To advance the policy described in subsections 2(b)–(e) of this order, the Secretary of Education (Secretary) shall, to the extent consistent with applicable law:

(i) make available, by January 1, 2020, through the Office of Federal Student Aid, a secure and confidential website and mobile application that informs Federal student loan borrowers of how much they owe, how much their monthly payment will be when they enter repayment, available repayment options, how long each repayment option will take, and how to enroll in the repayment option that best serves their needs;

(ii) expand and update annually the College Scorecard, or any successor, with the following program-level data for each certificate, degree, graduate, and professional program, for former students who received Federal student aid:

(A) estimated median earnings;

(B) median Stafford loan debt;

(C) median Graduate PLUS loan debt (if applicable);

(D) median Parent PLUS loan debt; and

(E) student loan default rate and repayment rate; and

(iii) expand and update annually the College Scorecard, or any successor, with the following institution-level data, providing the aggregate for all certificate, degree, graduate, and professional programs, for former students who received Federal student aid:

(A) student loan default rate and repayment rate;

(B) Graduate PLUS default rate and repayment rate; and

(C) Parent PLUS default rate and repayment rate.

(b) For the purpose of implementing subsection (a)(ii) of this section, the Secretary of the Treasury shall, upon the request of the Secretary, provide in a timely manner appropriate statistical studies and compilations regarding program-level earnings, consistent with section 6108(b) of title 26, United States Code, other applicable laws, and available data regarding programs attended by former students who received Federal student aid.

Sec. 5. *Reporting Requirements.* (a) By January 1, 2020, the Secretary, in consultation with the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Chairman of the Council of Economic Advisers, shall submit to the President, through the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, a report identifying and analyzing policy options for sharing the risk associated with Federal student loan debt among the Federal Government, institutions, and other entities.

(b) By January 1, 2020, the Secretary, in consultation with the Secretary of the Treasury, shall submit to the President, through the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, policy recommendations for reforming the collections process for Federal student loans in default.

(c) Beginning July 1, 2019, the Secretary shall provide an annual update on the Secretary's progress in implementing the policies set forth in subsections 2(b)–(e) of this order to the National Council for the American Worker at meetings of the Council.

(d) Within 1 year of the date of this order, the Secretary shall compile information about successful State and institutional efforts to promote students' timely and affordable completion of a postsecondary program of study. Based on that information, the Secretary shall publish a compilation of research results that addresses:

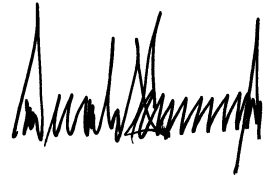
- (i) how some States and institutions have better facilitated successful transfer of credits and degree completion by transfer students;
- (ii) how States and institutions can increase access to dual enrollment programs; and
- (iii) other strategies for increasing student success, especially among students at high risk of not completing a postsecondary program of study.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 21, 2019.

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Federal Register

Vol. 84, No. 58

Tuesday, March 26, 2019

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Presidential Documents

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FEDERAL REGISTER PAGES AND DATE, MARCH

6953-7260.....	1	10971-11210.....	25
7261-7792.....	4	11211-11404.....	26
7793-7978.....	5		
7979-8244.....	6		
8245-8408.....	7		
8409-8588.....	8		
8589-8790.....	11		
8791-8952.....	12		
8953-9220.....	13		
9221-9450.....	14		
9451-9692.....	15		
9693-9934.....	18		
9935-10256.....	19		
10257-10398.....	20		
10399-10664.....	21		
10665-10970.....	22		

CFR PARTS AFFECTED DURING MARCH

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

Proposed Rules:

1402.....10439

3 CFR

Proclamations:

9845.....8227

9846.....8229

9847.....8241

9848.....8583

9849.....9935

9850.....10397

9851.....10399

Executive Orders:

13860.....8407

13861.....8585

13862.....8789

13863.....10255

13864.....11401

Administrative Orders:

Notices:

Notice of March 4,

2019.....7975

Notice of March 4,

2019.....7977

Notice of March 5,

2019.....8245

Orders:

Order of March 18,

2019.....10401

Presidential

Determinations:

No. 2019-11 of March

12, 2019.....9691

5 CFR

Proposed Rules:

532.....8043

7 CFR

51.....8589

52.....8589

210.....6953, 8247

235.....6953, 8247

457.....11211

920.....10257

927.....9221

929.....9937

959.....10665

986.....8409

987.....9693

1000.....8590

1145.....6961

Proposed Rules:

54.....10998

56.....10998

70.....10998

301.....7304

1214.....8627

1216.....8628

9 CFR

54.....11170

79.....11170

316.....9695

Proposed Rules:

1.....10721

2.....10721

3.....10721

160.....8476

161.....8476

162.....8476

10 CFR

72.....10257

429.....8411

430.....8411

625.....8791

Proposed Rules:

40.....6979

73.....6980, 10269

429.....9910

430.....9721, 9910

431.....9721, 9979

12 CFR

45.....9940

225.....8953

237.....9940

349.....9940

350.....9698

624.....9940

701.....10971

1005.....7979

1209.....9702

1217.....9702

1221.....9940

1248.....7793

1250.....9702

1310.....8958

Proposed Rules:

8.....10270

204.....8829

1026.....8479

1310.....9028

14 CFR

25.....8248

39.....6962, 7261, 7264, 7266,

7269, 7272, 7801, 7804,

8250, 8591, 8598, 8605,

8795, 8799, 8802, 8805,

8959, 8961, 8963, 8965,

10259, 10403, 10405, 10668,

11211, 11214

71.....6965, 6966, 7274, 7808,

8413, 8414, 8415, 10407

73.....8251

91.....9705, 9950

97.....9223, 9225

Proposed Rules:

13.....9724

39.....6981, 6984, 7832, 7835,

8482, 8832, 10449, 10735

71.....6987, 7306, 7308, 7837,

7839, 8834, 9048, 9260,

10451, 10453, 10455	5.....9231	562.....9962	3050.....8066
73.....7840, 10456	5c.....9231	718.....11224	
15 CFR	5f.....9231	728.....11225	40 CFR
Proposed Rules:	7.....9231	732.....11225	49.....7823
774.....8485	11.....9231		50.....9866
801.....11256	13.....9231	33 CFR	51.....8422
930.....8628	16.....9231	100....7285, 7810, 8607, 10992	52.....7299, 7823, 7998, 8257,
16 CFR	19.....9231	110.....7810, 9458	8260, 8422, 8610, 8809,
Proposed Rules:	20.....9231	117.....8418, 9459, 10411,	8812, 8813, 9240, 10264,
24.....8045	25.....9231	10676, 10992	10433, 10687, 10692, 11198,
305.....9261	31.....9231	147.....7810, 10992	11208
436.....9051	48.....9231	165.....6969, 6972, 7285, 7288,	60.....8260
17 CFR	49.....9231	7290, 7292, 7810, 7995,	61.....8260
270.....7980	54.....9231	7997, 8252, 8420, 9714,	62.....8001, 8262
274.....7980	55.....9231	9962, 10262, 10412, 10413,	63.....7682, 7825, 8260, 9590
18 CFR	148.....9231	10415, 10417, 10420, 10430,	70.....8260
4.....7988	301.....9231, 11217	10677, 10992, 10993	81.....8986
11.....7988	404.....9231	401.....8983	180....8611, 8820, 9243, 10695
37.....8156	601.....9231	402.....8984	271.....8260, 8988
45.....7274	602.....9231	Proposed Rules:	281.....8260
46.....7274	Proposed Rules:	100....6989, 7310, 8641, 9724,	300.....8989
157.....10409	1.....6988, 8050, 8051, 8188,	9727, 9731	1065.....9243
Proposed Rules:	8488, 9053, 10274, 11005,	117.....6992, 7842, 10745	Proposed Rules:
33.....7309	11009, 11259, 11263	165.....6994, 8051, 8489, 9468,	52.....7313, 7846, 7854, 7858,
19 CFR	20.....8278	11029, 11035	8491, 8492, 8643, 8645,
12.....8807	301.....8488, 10274	34 CFR	8647, 8654, 9991, 9993,
Proposed Rules:	27 CFR	400.....7294	9995, 10458, 10461, 10748,
220.....9273	447.....9239	401.....7294	10750, 10753
21 CFR	478.....9239	402.....7294	63.....8069
112.....9706	479.....9239	403.....7294	80.....9734, 10584
510.....8967	Proposed Rules:	406.....7294	81.....8492, 10461
520.....8967, 8982	4.....9990	410.....7294	174.....9735, 9737
522.....8967	5.....9990	411.....7294	180.....9735, 9737
524.....8967	7.....9990	413.....7294	258.....8496
526.....8967	14.....9990	461.....6974	271.....7010
529.....8967	19.....9990	668.....9964	300.....9073
556.....8967	29 CFR	674.....9964	721.....9999
558.....8967	1601.....10410	682.....9964	42 CFR
573.....7991	4022.....9454	685.....9964	59.....7714
866.....9226	4044.....9454	Proposed Rules:	405.....9460
882.....9228	Proposed Rules:	Ch. III.....8054, 8059	410.....9460
884.....7993	541.....10900	Ch. VI.....10748	411.....9460
Proposed Rules:	1206.....6989	36 CFR	414.....9460
121.....9987	1910.....8633	Proposed Rules:	415.....9460
573.....9989	1915.....8633	60.....6996	425.....9460
864.....8047	1917.....8633	63.....6996	455.....10700
22 CFR	1918.....8633		495.....9460
35.....9957	1926.....8633	37 CFR	1007.....10700
103.....9957	30 CFR	201.....10679, 10685	Proposed Rules:
127.....9957	250.....10989	203.....10685	88.....00000
138.....9957	550.....11222	210.....10685	Ch. IV.....8657
Proposed Rules:	553.....11222	Proposed Rules:	406.....7610
121.....8486	723.....10670	303.....9053	407.....7610
24 CFR	724.....10670	350.....9053	422.....7610, 8069
28.....9451	845.....10670	355.....9053	423.....7610
30.....9451	846.....10670	370.....9053	431.....7610
87.....9451	1241.....8416	380.....9053	438.....7610
180.....9451	Proposed Rules:	382.....9053	457.....7610
3282.....9451	57.....11028	383.....9053	482.....7610
Proposed Rules:	70.....11028	384.....9053	485.....7610
3280.....10738	72.....11028	385.....9053	43 CFR
3282.....10738	75.....11028	38 CFR	10.....6975
25 CFR	31 CFR	17.....7813, 8254	44 CFR
575.....6967	561.....9456	Proposed Rules:	64.....9966
26 CFR	566.....9456	4.....7844	206.....10632
1.....7283, 9231, 9959, 10976	32 CFR	38.....11037	45 CFR
	48.....7810	39 CFR	1148.....8003
	77.....8809	111.....9716	Proposed Rules:
	337.....6968	3020.....7815	Subtitle A.....8657
	542.....9962	Proposed Rules:	156.....7610
		111.....7005, 9470	170.....7424

171 7424
1302 11269

47 CFR

0 9463
1 8617
3 8994
27 8443
36 6977
52 11226
54 8003, 8619
64 8457, 10266, 11226
73 9465, 11233

Proposed Rules:

1 8497, 10275
64 7315, 9276
73 9281, 10275

76 8278
90 10275

48 CFR

801 9968
825 9968, 10995
836 9968
842 9968
846 9968
852 9968
853 9968

Proposed Rules:

Ch. 7 9739
739 10469
752 10469
6106 7861

49 CFR

172 8006
173 8006
192 11253
380 8029, 10437
383 8463
384 8463

Proposed Rules:

391 8497

50 CFR

217 8263
300 8624, 9243
622 7827, 7828, 8825, 8997,
10995, 10996
635 7302, 9719

648 8625, 8826, 8998, 8999,
10267, 10719
679 6978, 7303, 8474, 8626,
8828, 9000, 9416, 9466,
9976, 9978, 10268, 10437,
11254, 11255

Proposed Rules:

17 9648
18 10224
218 7186
300 7323, 9281
622 7864, 11275
648 8282, 10756
660 9471, 10768
665 8835

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List March 25, 2019

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