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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0221; Special Conditions No. 25–742–SC]

Special Conditions: GDC Technics, Boeing Model 777–300ER Airplane; the Use of Single-Passenger Side-Facing Seats Equipped With Multiple Airbag Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 777–300ER airplane. This airplane, as modified by GDC Technics, has novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature as modified by GDC Technics, will be equipped with nine single-passenger, side-facing seats, each of which will be installed with an upper torso restraint equipped with an airbag system and a floor level airbag system to limit the axial rotation of the upper leg, due to leg flail, of occupants in single-place, side facing divans. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on GDC Technics on March 27, 2019. Send comments on or before May 13, 2019.

ADDRESSES: Send comments identified by Docket No. FAA–2019–0221 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe & Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email *john.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 3, 2018, GDC Technics applied for a supplemental type certificate for the use of single-passenger side-facing seats equipped with multiple airbag systems in the Model 777–300ER airplane. The Model 777–300ER airplane is a derivative of the Boeing Model 777–300 airplane currently approved under Type Certificate No. T00001SE, and is a twin-engine, transport category airplane with a maximum takeoff weight of 775,000 pounds. The Model 777–300ER as modified by GDC Technics has a maximum seating capacity of 75 passengers and 11 flight attendants.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, GDC Technics must show that the Model 777–300ER airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE Rev 40 or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–300ER airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the

same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–300ER airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–300ER airplane will incorporate the following novel or unusual design features:

These special conditions are issued for the Boeing Model 777–300ER airplane. This airplane, as modified by GDC Technics, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature as modified by GDC Technics, will be equipped with nine single-passenger, side-facing seats, each of which will be installed with an upper torso restraint equipped with an airbag system and a floor level airbag system to limit the axial rotation of the upper leg, due to leg flail, of occupants in single-place, side facing divans. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion

The design and installation of side-facing seats, and their associated novel design features, utilized on the Boeing Model 777–300ER airplane will be certified by supplemental type certificate (STC), therefore the minimum acceptable testing and human injury criteria for these seats will be applied by special conditions developed using FAA Policy No. PS–ANM–25–03–R1, *Technical Criteria for Approving Side-Facing Seats.*

The FAA has issued special conditions in the past for airbag systems on lap belts for some forward-facing seats. These special conditions for the airbag systems in the shoulder belts as well as the leg flail arresting airbag systems are based on the previous special conditions for airbag systems on lap belts, with some changes to address the specific issues of side-facing seats. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

The FAA has considered the installation of airbag systems in the shoulder belts as well as the leg flail arresting airbag systems to have two primary safety concerns:

1. The systems perform properly under foreseeable operating conditions.

2. The systems do not perform in a manner or at such times as would constitute a hazard to the occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–300ER airplane. Should GDC Technics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–300ER airplanes, as modified by GDC Technics.

In addition to the airworthiness standards in §§ 25.562 and 25.785, special conditions 1 and 2 apply are applicable to all side-facing seat installations, and special conditions 3 through 16 apply to side-facing seats equipped with an airbag system in the shoulder belt system and an airbag system in the leg flail arresting device.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. The longitudinal test(s) conducted in accordance with § 25.562(b)(2) to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8), and these special conditions must have an ES–2re Anthropomorphic Test Dummy (ATD) (49 CFR part 572 subpart U) or equivalent, or a Hybrid-II ATD (49 CFR part 572, subpart B as specified in § 25.562) or equivalent, occupying each seat position and including all items contactable by the occupant (*e.g.,* armrest, interior wall, or furnishing) if those items are necessary to restrain the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable item 8 degrees clockwise about the airplane x-axis, then the item and floor representations must be rotated by 8 degrees clockwise also to maintain the same relative position to the seat place. Each ATD's relative position to the seat after application of floor misalignment must be the same as before misalignment is applied. To ensure proper loading of the seat by the occupants, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.

b. The longitudinal test(s) conducted in accordance with § 25.562(b)(2), to show compliance with the injury assessments required by § 25.562(c) and these special conditions, may be conducted separately from the test(s) to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1a, above, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES–2re ATD (49 CFR part 572 subpart U) or equivalent at all places. Alternatively,

these assessments may be accomplished by multiple tests that use an ES–2re at the seat place being evaluated, and a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed, to evaluate occupant interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be assessed. To make this assessment, tests may be conducted that include the actual item, located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item, but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

c. If a seat is installed aft of structure (*e.g.,* an interior wall or furnishing) that does not have a homogeneous surface contactable by the occupant, additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different injury considerations and may require additional analysis or separate test(s) to evaluate.

d. To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male size ATD's head during the longitudinal test(s) conducted in accordance with paragraphs a, b, and c, above. Otherwise, additional head-injury criteria (HIC) assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that support in a consistent manner regardless of occupant stature. For example, if an inflatable shoulder belt is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

e. For longitudinal test(s) conducted in accordance with § 25.562(b)(2) and these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

(1) ATD positioning—Lower the ATD vertically into the seat while simultaneously:

(a) Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

(b) Applying a horizontal x-axis direction (in the ATD coordinate system) force of about 20 lb (89 N) to the bottom of the feet of the ES–2re Hybrid-II, to compress the seat back cushion.

(c) Keeping the lower and upper legs nearly horizontal by supporting at the bottom of the feet.

(2) Once all lifting devices have been removed from the ATD:

(a) Rock it slightly to settle it in the seat.

(b) Bend the knees of the ATD.

(c) Separate the knees by about 4 inches (100 mm).

(d) Set the ES–2re's head at approximately the midpoint of the available range of z-axis rotation (to align the head and torso midsagittal planes).

(e) Position the ES–2re's arms at the joint's mechanical detent that puts them at approximately a 40-degree angle with respect to the torso. Position the Hybrid-II ATD hands on top of its upper legs.

(f) Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the airplane coordinate system).

(3) ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E) weighing about 2.5 lb (1.1 kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES–2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

(4) ES–2re ATD lateral instrumentation: The rib-module linear slides are directional, *i.e.,* deflection occurs in either a positive or negative ATD y-axis direction. The modules must be installed such that the moving end of the rib module is toward the front of the airplane. The three abdominal-force sensors must be installed such that they are on the side of the ATD toward the front of the airplane.

f. The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572 subpart B as specified in § 25.562), or equivalent, occupying each seat position.

g. Restraint systems:

(1) If inflatable shoulder and leg flail restraint systems are used, they must be active during all dynamic tests conducted to show compliance with § 25.562.

(2) The design and installation of seat-belt buckles must prevent unbuckling due to applied inertial forces or impact of the hands/arms of the occupant during an emergency landing.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

b. Thoracic: The deflection of any of the ES–2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

c. Abdominal: The sum of the measured ES–2re ATD front, middle, and rear abdominal forces must not exceed 562 lbs (2,500 N). Data must be processed as defined in FMVSS 571.214.

d. Pelvic: The pubic symphysis force measured by the ES–2re ATD must not exceed 1,350 lbs (6,000 N). Data must be processed as defined in FMVSS 571.214.

e. Leg: Axial rotation of the upper-leg (femur) must be limited to 35 degrees in either direction from the nominal seated position.

f. Neck: As measured by the ES–2re ATD and filtered at CFC 600 as defined in SAE J211:

(1) The upper-neck tension force at the occipital condyle (O.C.) location must be less than 405 lbs (1,800 N).

(2) The upper-neck compression force at the O.C. location must be less than 405 lbs (1,800 N).

(3) The upper-neck bending torque about the ATD x-axis at the O.C. location must be less than 1,018 in-lbs (115 Nm).

(4) The upper-neck resultant shear force at the O.C. location must be less than 186 lbs (825 N).

g. Occupant (ES–2re ATD) retention: The pelvic restraint must remain on the ES–2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

h. Occupant (ES–2re ATD) support:

(1) Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

(2) Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with a shoulder and leg flail airbag system, the shoulder and leg flail airbag system must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th percentile male. The airbag systems in the shoulder belts must provide a consistent approach to energy absorption throughout that range of occupants. At some buttock popliteal length and effective seat-bottom depth, the lower legs will not be able to form a 90-degree angle with the upper leg; at this point, the lower-leg flail would not occur. The leg-flail airbag system must provide a consistent approach to prevention of leg flail throughout that range of occupants whose lower legs can form a 90-degree angle relative to the upper legs when seated upright in the seat. Items that need to be considered include, but are not limited to, the range of occupants' popliteal height, the range of occupants' buttock popliteal length, the design of the seat effective height above the floor, and the effective depth of the seat bottom cushion. When the seat system includes an airbag system, that system must be included in each of the certification tests as it would be installed in the airplane. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a pregnant woman.

4. The airbag system in the shoulder belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the shoulder belt.

5. The design must prevent the airbag system in the shoulder belt from being either incorrectly buckled or incorrectly installed, such that the airbag system in the shoulder belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required injury protection.

6. It must be shown that the shoulder and leg flail airbag system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environmental conditions (vibrations, moisture, etc.) likely to occur in service.

7. Deployment of the shoulder and leg flail airbag system must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant whose belt is loosely fastened.

8. It must be shown that inadvertent deployment of the shoulder and leg flail airbag system, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants. This also includes preventing inadvertent airbag deployment from a static discharge.

9. If the airbag system is connected to the dynamic seat and must inflate through 9g static structure, then the static structure must not fail in such a way that it could impede egress or otherwise present a hazard to the occupants or to the airbag system.

10. The shoulder and leg flail airbag system must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lighting, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

11. The shoulder and leg flail airbag system must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag system in the shoulder belt does not have to be considered.

12. It must be shown that the shoulder and leg flail airbag system will not release hazardous quantities of gas, sharp injurious metal fragments, or particulate matter into the cabin.

13. The shoulder and leg flail airbag system installation must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crewmember to verify the integrity of the shoulder and leg flail airbag system activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (*i.e.,* independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

16. The shoulder and leg flail airbag system, once deployed, must not adversely affect the emergency-lighting system (*i.e.,* block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Des Moines, Washington, on March 20, 2019.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–05872 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31243; Amdt. No. 3844]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 27, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 27, 2019.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey

Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

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

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

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 8, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Apr–19	AL	Monroeville	Monroe County Aeroplex	8/3604	2/14/19	This NOTAM, published in TL 19–08, is hereby rescinded in its entirety.
25–Apr–19	FL	Tampa	Tampa Executive	8/2047	3/1/19	RNAV (GPS) RWY 23, Amdt 1C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Apr–19	FL	Tampa	Tampa Executive	8/2054	3/1/19	RNAV (GPS) RWY 5, Orig-C.
25–Apr–19	FL	Tampa	Tampa Executive	8/2100	3/1/19	RNAV (GPS) RWY 18, Amdt 1A.
25–Apr–19	FL	Tampa	Tampa Executive	8/2102	3/1/19	ILS OR LOC RWY 23, Amdt 1C.
25–Apr–19	CA	Tulare	Mefford Field	9/0276	3/1/19	VOR RWY 13, Amdt 2.
25–Apr–19	AL	Huntsville	Huntsville Executive Tom Sharp Jr Fld.	9/0352	3/1/19	Takeoff Minimums and Obstacle DP, Amdt 4A.
25–Apr–19	AL	Monroeville	Monroe County Aeroplex	9/0767	3/1/19	VOR RWY 21, Amdt 10B.
25–Apr–19	MT	Circle	Circle Town County	9/4642	2/25/19	RNAV (GPS) RWY 12, Orig-A.
25–Apr–19	MT	Circle	Circle Town County	9/4643	2/25/19	RNAV (GPS) RWY 30, Orig-B.
25–Apr–19	NJ	Trenton	Trenton Mercer	9/6484	2/25/19	RNAV (GPS) RWY 34, Orig-C.
25–Apr–19	IL	Bloomington/Normal	Central IL Rgnl Arpt At Bloomington-Normal.	9/6758	2/25/19	RNAV (GPS) RWY 2, Orig-C.

[FR Doc. 2019–05674 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31242; Amdt. No. 3843]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 27, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 27, 2019.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 8, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 25 April 2019

Brinkley, AR, Frank Federer Memorial, RNAV (GPS) RWY 20, Orig-B
Angola, IN, Tri-State Steuben County, RNAV (GPS) RWY 23, Orig-D
Leitchfield, KY, Leitchfield-Grayson CO, RNAV (GPS) RWY 2, Orig
Leitchfield, KY, Leitchfield-Grayson CO, RNAV (GPS) RWY 20, Orig
Leitchfield, KY, Leitchfield-Grayson CO, Takeoff Minimums and Obstacle DP, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 11, ILS RWY 11 SA CAT I, ILS RWY 11 CAT II, ILS RWY 11 CAT III, Amdt 5
Grand Marais, MN, Grand Marais/Cook County, RNAV (GPS) RWY 28, Amdt 3
Spokane, WA, Spokane Intl, ILS OR LOC RWY 3, ILS RWY 3 SA CAT I, ILS RWY 3 CAT II, ILS RWY 3 CAT III, Amdt 7A
Spokane, WA, Spokane Intl, RNAV (GPS) Y RWY 3, Amdt 2E
Spokane, WA, Spokane Intl, RNAV (GPS) Y RWY 8, Amdt 2C
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 3, Amdt 1A
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 8, Amdt 1A
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 21, Amdt 1C
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 26, Amdt 1C
Burlington, WI, Burlington Muni, VOR–A, Amdt 2A

[FR Doc. 2019–05675 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 950

[Docket No: 181108999–9149–02]

RIN 0648–BI60

Schedule of Fees for Access to NOAA Environmental Data, Information, and Related Products and Services; Correction

AGENCY: National Environmental Satellite, Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Correcting amendment.

SUMMARY: NESDIS published a document in the **Federal Register** on February 11, 2019, establishing a new schedule of fees for special access to NOAA data, information, and related products and services. Several entries in the table of fees were inadvertently transcribed incorrectly, and this rule is necessary to correct those errors. This will avoid confusion among regulated entities and allow NESDIS to charge fees, where appropriate, consistent with its statutory authority to accurately reflect the cost of providing access to certain environmental information, information, and related products and services.

DATES: This correction is effective March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Mahendra Shrestha, (301) 713–7063.

SUPPLEMENTARY INFORMATION: NESDIS published a final rule (84 FR 3101; February 11, 2019) to establish a new schedule of fees for special access to NOAA data, information and related products and services. As explained in greater detail in the original final rule, NOAA continues to make its environmental data available to the public without any fee in most instances, primarily via NOAA's Comprehensive Large Array-Data Stewardship System (CLASS). NESDIS is revising the fee schedule that has been in effect since 2015 to ensure that the fees accurately reflect the costs of providing access to the environmental data, information, and related products and services. NESDIS is authorized under 15 U.S.C. 1534 to assess fees, up to fair market value, depending upon the user and intended use, for access to environmental data, information, and products derived from, collected, and/or archived by NOAA. The changes to the table are minimal and within the scope of our statutory authority and the public's reasonable expectations.

Need for Correction

In the **Federal Register** of February 11, 2019, (84 CFR 3101) NESDIS included a table, Appendix A to Part 950—Schedule of User Fees for Access to NOAA Environmental Data on page 3102. That table included several entries of services that NESDIS no longer provides.

Classification

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

12866. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this rule falls within the public property exception of subparagraph (a)(2) of section 553, as it relates only to the assessment of fees, as authorized by 15 U.S.C. 1534. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 950

Organization and functions (Government agencies).

Dated: March 8, 2019.

Cherish Johnson,

Chief Financial Officer (CFO/CAO), National Environmental, Satellite and Data Information Service.

For the reasons set forth above, 15 CFR part 950 is amended as follows:

PART 950—ENVIRONMENTAL DATA AND INFORMATION

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 15 U.S.C. 1534.

■ 2. Revise Appendix A to part 950—Schedule of User Fees for Access to NOAA Environmental Data to read as follows:

APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA

Name of product/data/publication/information/service NOAA National Center for Environmental Information	Current fee ($)	New fee ($)
Department of Commerce Certification	116.00	119.00
General Certification	92.00	103.00
Paper Copy	3.00	8.00
Data Poster	18.00	17.00
Shipping Service	8.00	8.00
Rush order fee	60.00	63.00
Super Rush Order Fee	100.00	105.00
Foreign Handling Fee	43.00	45.00
NEXRAD Doppler radar Color Prints	21.00	22.00
Paper Copy from Electronic Media	8.00	8.00
Offline In-Situ Digital Data	175.00	127.00
Microfilm Copy (roll to paper) per frame from existing film	20.00	20.00
Satellite Image Product	92.00	61.00
Offline Satellite, Radar, and Model Digital Data (average unit size is 1 terabyte)	753.00	388.00
Conventional CD–ROM/DVD	110.00	79.00
Specialized CD–ROM/DVD	208.00	175.00
CD–ROM/DVD Copy, Offline	43.00	62.00
CD–ROM/DVD Copy, Online Store	16.00	28.00
Facsimile Service	89.00	89.00
Order Handling	11.00	20.00
Non-Digital Order Consultation	10.00	9.00
Digital Order Consultation	28.00	26.00
Non-Serial Publications	32.00	*
Non-Standard Data; Select/Copy to CD, DVD or Electronic Transfer, Specialized, Offline	77.00	*
Digital and Non-Digital Off-the-Shelf Products, Online	13.00	*
Digital and Non-Digital Off-the-Shelf Products, Offline	17.00	*
Order Consultation Fee	4.00	*
Handling and Packing Fee	12.00	*
Mini Poster	2.00	*
Icosahedron Globe	1.00	*
Convert Data to Standard Image	8.00	*
Single Orbit OLS & Subset	19.00	20.00
Single Orbit OLS & Subset, Additional Orbits	6.00	6.00
Geolocated Data	50.00	*
Subset of Pre-existing Geolocated Data	32.00	*
Global Nighttime Lights Annual Composite from One Satellite	74,032.00	*
Daily or Nightly Global Mosaics (visible & thermal band, single spectral band or environmental data)	332.00	*
Global Nighttime Lights Monthly Composite—one satellite	8,259.00	8,705.00
Research Data Series CD–ROM/DVD	25.00	25.00
NOS Bathymetric Maps and Miscellaneous Archived Publication Inventory	8.00	*
Global Annual Composite of Nighttime Lights in Monthly Increments From One Satellite	10,794.00	*
High Definition Geomagnetic Model	20,262.00	22,540.00
High Definition Geomagnetic Model—Real Time (HDGM–RT)	26,204.00	29,059.00
Provision of Global Nighttime VIIRS day/night band data in geotiff Format	55,727.00	56,130.00
Provision of Global Nighttime VIIRS day/night band data in HDF5 Format	27,888.00	29,975.00
Provision of regional data from the VIIRS instrument on a daily basis	14,306.00	14,720.00

* Indicates a product no longer offered.

[FR Doc. 2019–05765 Filed 3–26–19; 8:45 am]
BILLING CODE 3510–HR–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 700

[Docket ID: USN–2019–HQ–0005]

RIN 0703–AB06

United States Navy Regulations and Official Records

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the Code of Federal Regulations (CFR) part concerning United States Navy Regulations (NAVREGS) and Official Records. The NAVREGS are not required to be published in the CFR because they do not apply to or impact the public.

DATES: This rule is effective on March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Lieutenant Damon Burman at 703–614–5783.

SUPPLEMENTARY INFORMATION: The NAVREGS are issued by the Secretary of the Navy under 10 U.S.C. 6011 and delineate the duties, responsibilities, authorities, distinctions, and relationships between various commands, officials, and individuals within the Department of the Navy (DON). The NAVREGS are not applicable to, and do not impact, the public. Therefore, they are not required to be published in the CFR. Nevertheless, a current version of the NAVREGS is maintained on and available to the public for download from the DON Issuances website, *https://doni.documentservices.dla.mil/default.aspx.*

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it based upon removing internal DON 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 700

Coast Guard, Military personnel, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

PART 700—[REMOVED]

■ Accordingly, by authority of 5 U.S.C. 301, 32 CFR part 700 is removed.

Dated: March 22, 2019.

M.S. Werner,

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

[FR Doc. 2019–05820 Filed 3–26–19; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0168]

RIN 1625–AA08

Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh Pennsylvania

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for parts of the navigable waters of the Allegheny, Monongahela, and Ohio Rivers. This action is necessary to ensure safety of life on these navigable waters during the weekend of the Garth Brooks concert at Heinz Field. Persons and vessels are prohibited from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative. In addition, persons and vessels are prohibited from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0168 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh Waterways Division, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On March 12, 2019, Heinz Field notified the Coast Guard that it would be holding a concert from 5 p.m. to 11 p.m. on May 18, 2019. Heinz Field is located in close proximity to the banks of the Ohio and Allegheny Rivers, which are high vessel traffic areas used by both commercial and recreational vessels. Due to the proximity of Heinz Field to these waterways, it will be a destination for many recreational vessels to anchor and loiter throughout the concert weekend of May 17, 2019 to May 19, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety concerns and hazards that could occur in this area during the concert.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041(a). The COTP has determined that this special local regulation is necessary to maintain an open navigation channel and ensure the safety of vessels on these navigable waters during the concert weekend. Risk of collisions near Heinz Field is a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters adjacent to Heinz Field along the Allegheny, Monongahela, and Ohio Rivers before, during, and after the Garth Brooks concert weekend.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a special local regulation from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019. The special local regulation will cover all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8, Allegheny River, Fort Pitt Highway Bridge at MM 0.22, Monongahela River, and West End-North Side Highway Bridge at MM 0.8, Ohio River. The duration of the zone is intended to ensure the safety of vessels on these navigable waters. This special local regulation applies to any vessel operating within the area, including a naval or public vessel, except a vessel engaged in law enforcement, servicing aids to navigation, or surveying, maintaining, or improving waters within the regulated area. No vessel is permitted to loiter, anchor, stop, moor, remain or drift in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the COTP or a designated representative. In addition, no vessel or person is permitted to loiter, anchor, stop, remain, or drift more than 100 feet from any riverbank unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF–FM Channel 16. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the special local regulation. The special local regulation will impact a small section of the Allegheny, Monongahela, and Ohio Rivers, less than three total miles. Moreover, the special local regulation will not stop vessels from transiting the area, it will only establish certain areas where vessels are prohibited from loitering, anchoring, stopping, or drifting.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

special local regulation covering less than 3 miles and lasting approximately 3 days. It will prohibit persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0168 to read as follows:

§ 100.T08–0168 Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA.

(a) *Location.* The following is a special local regulation for all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8, Allegheny River, Fort Pitt Highway Bridge at MM 0.22, Monongahela River, and West End-North Side Highway Bridge at MM 0.8, Ohio River.

(b) *Applicability.* This section applies to any vessel operating within the area, including a naval or public vessel, except a vessel engaged in:

(1) Law enforcement;

(2) Servicing aids to navigation; or

(3) Surveying, maintaining, or improving waters within the regulated area.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.801, no vessel shall loiter, anchor, stop, moor, remain, drift, or act in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any riverbank within the regulated area unless authorized by the COTP or a designated representative.

(3) A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF–FM Channel 16.

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

(d) *Effective period.* This section will be effective from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019.

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

Dated: March 21, 2019.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2019–05819 Filed 3–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0135]

Safety Zone; Pittsburgh Pirates Fireworks, Allegheny River, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones for the Pittsburgh Pirates Fireworks on the Allegheny River, extending the entire width of the river, from mile 0.2 to 0.9 in Pittsburgh, PA. The safety zones are necessary to protect vessels transiting the area and event spectators from the hazards associated with the Pittsburgh Pirates barge-based firework displays following certain home games throughout the season. During the enforcement period, entry into, transiting, or anchoring in the safety zones is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.801, Table 1, Line 1 will be enforced from 8 p.m. through 11:59 p.m. each day on May 24, June 21, August 3, August 23, and September 27, 2019, unless the firework displays are postponed because of adverse weather, in which case, this rule will be enforced within 48 hours of each scheduled date.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones for the annual Pittsburgh Pirates Fireworks listed in 33 CFR 165.801, Table 1, line 1 from 8 p.m. through 11:59 p.m. each day on May 24, June 21, August 3, August 23, and September 27, 2019. Should inclement weather require rescheduling, the safety zone will be effective following games on a rain date to occur within 48 hours of the scheduled date. Entry into the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Local Notice to Mariners and updates via Marine Information Broadcasts.

Dated: March 21, 2019.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2019–05824 Filed 3–26–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0194; FRL–9989–65]

Sulfometuron-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfometuron-methyl in or on sugarcane, cane. E.I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 27, 2019. Objections and requests for hearings must be received on or before May 28, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0194, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0194 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 28, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0194, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 15, 2017 (82 FR 43352) (FRL–9965–43), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8529) by E. I. du Pont de Nemours and Company, 974 Centre Road, Wilmington, Delaware 19805, now Corteva Agriscience after E.I. du Pont de Nemours and Company merged with Dow AgroScience. The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the herbicide sulfometuron-methyl, in or on sugarcane, cane; sugarcane, sugar, refined; and sugarcane, molasses at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by E. I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received in response to the notice of filing, and the Agency's response can be found in Unit IV.C.

Based upon review of the data supporting the petition, EPA has determined a tolerance of 0.1 sugarcane, cane is appropriate, but that tolerances on sugarcane, sugar, refined and sugarcane, molasses is not needed. The reasons for these changes are further explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

A. Toxicological Profile

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

The primary toxic effect in the toxicological database is changes in hematological parameters and body weight decrements. There is no evidence that sulfometuron-methyl is a developmental toxicant based on a prenatal developmental study in rats and increased susceptibility was not commonly observed in the database for other registered sulfonylurea herbicides (SUs). There is no evidence of neurotoxicity or immunotoxicity in the toxicology databased for sulfometuron-methyl. Sulfometuron-methyl is classified as ''not likely to be carcinogenic to humans'' based on lack of treatment-related increases in tumor incidence compared to controls in the mouse carcinogenicity study and negative findings in the genotoxicity toxicity studies. Sulfometuron-methyl has low acute toxicity via oral, dermal, and inhalation routes of exposure. It shows minimal eye irritation and is not a dermal irritant or sensitizer. Specific information on the studies received and the nature of the adverse effects caused by sulfometuron-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Sulfometuron-Methyl. Human Health Risk Assessment for a Tolerance without a U.S. Registration for Residues in/on Imported Sugarcane'' at pages 18–20 in docket ID number EPA–HQ–OPP–2017–0194.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the NOAEL and the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFOMETURON-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	A dose and endpoint of concern attributable to a single dose was not observed at doses relevant for human health risk assessment.		
Chronic dietary (All populations).	NOAEL = 27.5 mg/kg/day UF_A = 10× UF_H = 10× FQPA SF = 1×	Chronic RfD = 0.275 mg/kg/day cPAD = 0.275 mg/kg/day	Chronic Oral Toxicity Study (dog) LOAEL = 148.5 mg/kg/day based on decreases in body-weight gain in males, hemolytic anemia, and a slight increase in alkaline phosphates in both sexes.
Cancer (Oral, dermal, inhalation).	Sulfometuron-methyl is classified as ''not likely to be carcinogenic to humans'' based on lack of treatment-related increases in tumor incidence compared to controls in the mouse carcinogenicity study and negative findings in the mutagenicity/genetic toxicity studies.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). RfD = reference dose. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

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

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were

identified in the toxicological studies for sulfometuron-methyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 2003–2008 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100% crop treated (CT) and used tolerance-level residues for the sugarcane commodities. The 2018 default processing factors were used (in this case, the factors were 1 for sugarcane commodities).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that sulfometuron-methyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sulfometuron-methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sulfometuron-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Instead of generating chemical-specific estimated drinking water concentrations (EDWCs) for sulfometuron-methyl, EPA used model inputs (rate, soil mobility, persistence) from all the sulfonylurea herbicides (sulfometuron-methyl is a sulfonylurea herbicide) to determine coarse-screen estimates that should exceed upper-bound, chemical-specific EDWCs for any SU. The resulting coarse-screen EDWCs generated with the Pesticide Root Zone Model Ground Water (PRZM GW) were higher than the surface water estimates and were used as conservative estimates of potential residues from sulfometuron-methyl in drinking water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.492 ppm was used to assess the contribution to drinking water.

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

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

In 2016, EPA's Office of Pesticide Programs released a guidance document entitled, *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-cumulative-risk-assessment-framework.* EPA has utilized this framework for sulfometuron-methyl and determined that although sulfometuron-methyl shares some chemical and/or toxicological characteristics (*e.g.,* chemical structure or apical endpoint) with other pesticides, the toxicological database does not support a testable hypothesis for a common mechanism of action. No further data are required to determine that no common mechanism of toxicity exists for sulfometuron-methyl and other pesticides, and no further cumulative evaluation is necessary for sulfometuron-methyl.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence that sulfometuron-methyl is a developmental toxicant based on a prenatal developmental study in rats and increased susceptibility was not commonly observed in the database for other registered SUs.

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

i. The toxicity database for sulfometuron-methyl is complete.

ii. There is no indication that sulfometuron-methyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that sulfometuron-methyl results in increased susceptibility in rabbits in a prenatal developmental study. EPA has concluded based on a weight-of-evidence approach that the rat developmental and reproduction toxicity studies are not required for sulfometuron-methyl at this time for the following reasons: (1) Increased susceptibility was not commonly observed in the SU database; and (2) the chronic oral dog study, which is the study used to establish points of departure for sulfometuron-methyl, provides similar or lower NOAEL/LOAEL values than the rat developmental and rat reproduction toxicity studies across the SU database.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute

exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, sulfometuron-methyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sulfometuron-methyl from food and water will utilize 9.7% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. There are no residential uses for sulfometuron-methyl; therefore, the chronic aggregate risk assessment is equivalent to the chronic dietary assessment. There are no chronic dietary risks of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no uses for sulfometuron-methyl that result in residential exposures, the short-term aggregate assessment is equivalent to the chronic dietary assessment. There are no chronic dietary risks of concern as described above.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no uses for sulfometuron-methyl that result in residential exposures, the intermediate-term aggregate assessment is equivalent to the chronic dietary assessment. There are no chronic dietary risks of concern as described above.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in the rodent mouse carcinogenicity study and negative findings in the mutagenicity/genetic toxicity studies, sulfometuron-methyl is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography–tandem mass spectrometry (LC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for sulfometuron-methyl.

C. Response to Comments

One comment was submitted insisting that no residues of sulfometuron-methyl be permitted in food, although no additional information was provided that would support a conclusion that the tolerances requested for sulfometuron-methyl are not safe. Although some individuals do not want pesticides to be used on food, the FFDCA authorizes EPA to establish tolerances that permit certain levels of pesticide residues in or on food when the Agency can determine that such residues are safe. EPA has made that determination for the tolerances subject to this action, and the commenter provided no information to support a determination that the tolerance is not safe.

D. Revisions to Petitioned-For Tolerances

The petitioner requested a tolerance for residues of 0.01 ppm in/on sugarcane, cane; sugarcane, sugar, refined; and sugarcane, molasses. The residue data support a tolerance on sugarcane, cane of 0.1 ppm. This value is also harmonized with the MRL established in the major exporting country, Brazil. A value of 0.01 ppm may create a perceived trade irritant if the U.S. tolerance is lower than the MRL in the major exporting country. Tolerances for residues in/on sugarcane, sugar, refined and sugarcane, molasses are not needed, since residues are not expected to concentrate in the processed commodities.

V. Conclusion

Therefore, a tolerance is established for residues of sulfometuron-methyl, in or on sugarcane, cane at 0.1 ppm.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States

or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 18, 2019.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.704 to subpart C to read as follows:

§ 180.704 Sulfometuron-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide sulfometuron-methyl, including its metabolites and degradates, in or on the commodity in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only sulfometuron-methyl, (methyl 2-[[[[(4,6-dimethyl-2-pyrimidinyl)amino]carbonyl]amino] sulfonyl]benzoate), in or on the following raw agricultural commodities:

Commodity	Parts per million
Sugarcane, cane [1]	0.1

[1] There are no U.S. Registrations on Sugarcane as of September 24, 2018.

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

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

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

[FR Doc. 2019–05877 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2016–0231; FRL–9989–29]

RIN 2070–AK07

Methylene Chloride; Regulation of Paint and Coating Removal for Consumer Use Under TSCA Section 6(a)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Methylene chloride, also called dichloromethane, is a volatile chemical used in paint and coating removal products. In this final rule, EPA has determined that the use of methylene chloride in consumer paint and coating removal presents an unreasonable risk of injury to health due to acute human lethality. In order to address the unreasonable risk, EPA is prohibiting the manufacture (including import), processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers; requiring manufacturers (including importers), processors, and distributors, except for retailers, of methylene chloride for any use to provide downstream notification of these prohibitions; and requiring recordkeeping. While EPA proposed a determination of unreasonable risk from the use of methylene chloride in commercial paint and coating removal, EPA is not finalizing that determination in this rule. EPA is soliciting comment, through an advance notice of proposed rulemaking (ANPRM) published elsewhere in this issue of the **Federal Register**, on questions related to a potential training, certification, and limited access program as an option for risk management for all of the commercial uses of methylene chloride in paint and coating removal.

DATES: This final rule is effective May 28, 2019.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0231, is available at *http://www.regulations.gov.* A public version of the docket is available for inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays, at the U.S. Environmental Protection Agency, EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Joel Wolf, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0432; email address: *MCConsumerPR@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may potentially be affected by this final action if you manufacture (including import), process, or distribute in commerce methylene chloride (CASRN 75–09–2). The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Chemical and Allied Products Manufacturers (NAICS code 32411)
- Chemical and Allied Products and Merchants Wholesalers (NAICS code 4246)
- Building Materials and Supplies Dealers (NAICS code 4441)

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import

any chemical substance governed by a final TSCA section 6 rule are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that a shipment of the chemical substance (in this case, methylene chloride) complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance subject to regulation under section 6 (in this case, methylene chloride) are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this final action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant, under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk.

With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which a completed risk assessment was published prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, TSCA section 26(l)(4) (15 U.S.C. 2625(l)(4)) provides that EPA ''may publish proposed and final rules under [TSCA section 6(a)] that are consistent with the scope of the completed risk assessment and consistent with other applicable requirements of [TSCA section 6].'' Methylene chloride is such a chemical substance. It is listed in the 2014 update to the TSCA Work Plan and the 2014 final risk assessment includes consumer uses of paint and coating removal, among other uses (Refs. 1 and 2). EPA is publishing this final rule under TSCA section 6(a) in accordance with that discretionary statutory authority.

C. What action is the Agency taking?

EPA is making a final determination that the use of methylene chloride in consumer paint and coating removal presents an unreasonable risk of injury to health due to acute human lethality. Accordingly, EPA is issuing a final rule under section 6(a) of TSCA to prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for consumer paint and coating removal (including distribution to and by retailers). This final rule also requires manufacturers (including importers), processors, and distributors, except for retailers, of methylene chloride for any use to provide downstream notification of the prohibitions throughout the supply chain; and requires limited recordkeeping. More details on these requirements are in Unit III.B.

In the proposed rule for methylene chloride in paint and coating removal (Ref. 3), EPA proposed an unreasonable risk determination for methylene chloride in commercial paint removal uses. In addition, EPA proposed to regulate under TSCA section 6(a) manufacture (including import), processing, distribution in commerce and use of methylene chloride in paint and coating removal for certain commercial uses. As noted previously, exercising its discretion under section 26(l)(4), EPA is not finalizing the proposed unreasonable risk determination and the proposed regulation for commercial uses of methylene chloride in paint and coating removal in this final action. Rather, EPA is soliciting comment, through an ANPRM published elsewhere in this issue of the **Federal Register**, on questions related to a potential training, certification, and limited access program as an option for risk management for all of the commercial uses of methylene chloride in paint and coating removal. More details on the proposed rule are in Unit II.B.2.

In the proposed rule for methylene chloride in paint and coating removal, EPA also proposed to regulate under TSCA section 6(a) N-methylpyrrolidone (NMP) in paint and coating removal. EPA is not finalizing the proposed regulation for NMP as part of this action. NMP use in paint and coating removal will be incorporated into the risk evaluation currently being conducted under TSCA section 6(b). More information about the proposed rule and NMP is in Unit II.B.2.

D. Why is the Agency taking this action?

Based on EPA's analysis of consumer exposures to methylene chloride in paint and coating removal, EPA is making a final determination that the use of methylene chloride in consumer paint and coating removal presents an unreasonable risk of injury to health due to acute human lethality. This final rule addresses the unreasonable risk, which may include death due to asphyxiation, in a manner that results in the chemical no longer presenting that unreasonable risk. Effects from acute exposure during use of methylene chloride in paint and coating removal may include neurological impacts such as dizziness, incapacitation, loss of consciousness, coma, and death (Ref. 2).

As noted in Unit III.A., EPA is regulating certain conditions of use of methylene chloride related to consumer paint and coating removal, which is estimated to comprise less than 10% of the total use of the chemical (Ref. 4).

E. What are the estimated impacts of this action?

As described in more detail in the Economic Analysis (Ref. 4), EPA's analysis of the cost of this rule is estimated to be $3.8 to $13.6 million annualized over 20 years at a 3% discount rate and $3.8 to $13.7 million annualized over 20 years at a 7% discount rate. Because the costs estimated in this rule are variable, the values at the different discount rates are similar. Unquantified costs include potential loss of producer and consumer surplus associated with possible reductions in paint and coating removal activity. There may also be unquantified costs associated with performance of alternatives including longer time for products to work and countervailing hazards from alternative chemicals including potentially higher flammability and exposure to other toxic chemicals.

Preventing exposure to methylene chloride in consumer paint and coating removal results in monetized benefits, as well as non-monetized benefits. Monetized benefits include the prevention of deaths resulting from acute adverse effects that occur at a known rate among consumer users. Non-monetized benefits result from the prevention of some non-cancer adverse effects to the nervous system. Thus, there is not a quantification or monetary valuation estimate for the overall total benefits. Based on the benefits that EPA can monetize, the benefits for this rule are approximately $3.5 million per year over 20 years at 3% and 7% discount rate (Ref. 4).

F. Children's Environmental Health

This action is consistent with the 1995 EPA Policy on Evaluating Health

Risks to Children (*http://www.epa.gov/children/epas-policy-evaluating-risk-children*). In its TSCA Work Plan Risk Assessment for methylene chloride, EPA identified risks from inhalation exposure to children who may be present as bystanders in homes where consumer paint and coating removal occurs. These risks may include neurological effects such as cognitive impairment, sensory impairment, dizziness, incapacitation, and loss of consciousness (leading to risks of falls, concussion, and other injuries). Supporting information on the health effects of methylene chloride exposure to children is available in the Toxicological Review of Methylene Chloride (Ref. 5) and the Final Risk Assessment on Methylene Chloride (Ref. 2), as well as Unit II.A.

II. Background

A. Methylene Chloride, Health Effects, Risks, and Other Regulatory Actions

Methylene chloride (CASRN 75–09–2) is a solvent used in a variety of industrial, commercial and consumer use applications, including adhesives, pharmaceuticals, metal cleaning, chemical processing, and feedstock in the production of refrigerant hydrofluorocarbon-32 (Ref. 2). According to the 2016 Chemical Data Reporting (CDR) information, approximately 264 million pounds of methylene chloride were domestically manufactured or imported into the United States in 2015, with the bulk of the volume domestically manufactured (Ref. 6). Most methylene chloride is produced and used for purposes other than paint and coating removal, which represents less than 10% of total use of methylene chloride (Ref. 4). In terms of environmental releases, 271 facilities reported a total of 3.4 million pounds of releases of methylene chloride to the 2015 Toxics Release Inventory (Ref. 7). Individuals are exposed to methylene chloride from industrial/commercial and consumer sources in different settings, such as homes and workplaces, and through multiple routes (inhalation, dermal, and ingestion).

Methylene chloride is acutely lethal, a neurotoxicant, and a likely human carcinogen. This final rule is specifically intended to prevent the unreasonable risks of injury to health due to acute human lethality from use of methylene chloride for consumer paint and coating removal. The risk assessment presents a detailed description of the range of adverse acute and chronic health effects associated with methylene chloride (Ref. 2).

The primary target organ of methylene chloride acute toxicity is the brain, and neurological effects result from either direct narcosis or the formation of carbon monoxide. The accumulation of carboxyhemoglobin in the blood can lead to sensory impairment, dizziness, incapacitation, loss of consciousness, heart failure, and death. The neurotoxic and cardiovascular effects may be exacerbated in fetuses and in infants with higher residual levels of fetal hemoglobin when exposed to high concentrations of methylene chloride (Ref. 2).

Based on data from the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), state records, and publicly reported information, EPA identified 49 fatalities from 1976 to 2016 (Ref. 3 at p. 7482) resulting from consumer or commercial worker exposure to methylene chloride during paint and coating removal. However, this may be an underestimate of the deaths that have occurred (Refs. 7 and 8). More details are provided in the proposed rule (Ref. 3 at p. 7468).

Since the publication of the January 19, 2017, proposed rule, EPA has learned of four additional fatalities due to methylene chloride in paint and coating removal (Ref. 10). Two of the victims were independent contractors working for small or family-owned businesses, the third was a small business owner, and the fourth was a consumer who died while using a methylene chloride paint and coating removal product to remove paint (Ref. 10). Many of the victims used paint and coating removers easily available to consumers through retailers. This may not constitute an exhaustive list of fatalities, rather, those that were brought to the attention of the Agency since publication of the proposed rule.

The use of methylene chloride in paint and coating removal presents an increased risk of death and nervous system effects for many of the estimated 1.3 million consumers and residential bystanders who use or are exposed to methylene chloride through consumer paint and coating removal each year (Ref. 4). Of particular concern is the potential for acute neurological impairment (central nervous system depressant effects) for consumers using methylene chloride for paint and coating removal. In the risk assessment, the upper-end scenarios for consumer users had 4-hour exposures of 233 parts per million (ppm). As described in the risk assessment, the Acute Exposure Guideline (AEGL–2), which is the threshold for disability for an 8-hour exposure, is 60 ppm. In humans, acute exposure to methylene chloride above 200 ppm results in acute neurobehavioral deficits measured in psychomotor tasks including: Tests of hand-eye coordination, visual evoked response changes, and auditory vigilance. In a few cases, cardiotoxic effects (*i.e.,* evidenced by electrocardiogram changes) were reported in humans (Ref. 2).

Some populations are currently at disproportionate risk for the health effects associated with use of methylene chloride in paint and coating removal, including children present in homes where consumer paint and coating removal is conducted. EPA's full analysis, conducted as part of compliance with Executive Order 13166 (65 FR 50121, August 11, 2000) and Executive Order 12898 (59 FR 7629, February 16, 1994) is described in the proposed rule (Ref. 3 at pp. 7476, 7525).

While the primary concern has been human health, there is potential for methylene chloride exposures to adversely impact ecological receptors. Methylene chloride is mainly released to the environment in air, and to a lesser extent in water and soil, due to industrial/commercial and consumer uses as a solvent, in aerosol products, and in paint and coating removal. Methylene chloride is moderately persistent and its bioaccumulation potential is low. Though volatile, methylene chloride has negligible atmospheric photochemical reactions, and is therefore exempt from being classified as a volatile organic compound (VOC) as defined at 40 CFR 51.100(c).

The proposed rule presented a comprehensive overview of regulatory actions by EPA, other Federal agencies, and state and international agencies pertaining to methylene chloride use in paint and coating removal and actions addressing methylene chloride waste disposal, releases to air and contamination of groundwater, drinking water, and soils (Ref. 3 at p. 7469). EPA presents here a summary of those actions, with a focus on those that have changed since the proposed rule.

EPA has issued several final rules and notices pertaining to methylene chloride under EPA's various authorities. Under the Clean Air Act, which designates methylene chloride as a hazardous air pollutant (HAP), EPA has promulgated several National Emissions Standards for Hazardous Air Pollutants (NESHAPs) addressing specific sources for methylene chloride emissions, including area sources engaged in paint stripping, surface coating of motor vehicles and mobile equipment, and miscellaneous surface coating

operations, and a 2015 update to a 1995 NESHAP for Aerospace Manufacturing and Rework Facilities (42 U.S.C. 7412(b)(1)) CAA). Methylene chloride is listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) (Hazardous Waste No. U080, for discarded commercial products, and Waste Nos. F001, F002, for spent halogenated solvents including those halogenated solvents used in degreasing) and as a hazardous constituent in appendix VIII to 40 CFR part 261 (Ref. 2). The Emergency Planning and Community Right-to-Know Act, section 313, lists methylene chloride on the Toxics Release Inventory (TRI) (Ref. 2). The Safe Drinking Water Act requires EPA to determine the level of contaminants in drinking water at which no adverse health effects are likely to occur, with EPA setting a maximum contaminant level goal of zero and an enforceable maximum contaminant level for methylene chloride (dichloromethane) at 0.005 milligrams/Liter (mg/L) or 5 parts per billion (ppb) (57 FR 31776, July 17, 1992).

Other Federal agencies with regulations on methylene chloride include the Food and Drug Administration (FDA), which has banned methylene chloride as an ingredient in all cosmetic products (21 CFR 700.19); OSHA, which has a permissible exposure limit (PEL) of 25 ppm as an eight-hour time-weighted average (TWA) and a 15-minute short-term exposure limit (STEL) of 125 ppm; and CPSC, which has updated its labeling policy for household products containing methylene chloride.

In 2016, CPSC was petitioned by the Halogenated Solvents Industry Alliance to amend its guidance contained in the Statement of Interpretation and Enforcement Policy on the Labeling of Certain Household Products Containing Methylene Chloride; CPSC published that petition and requested public comments (81 FR 60298, September 1, 2016). In response to that petition, CPSC updated the cautionary labeling policy for paint strippers containing methylene chloride to recommend the inclusion of language on the principal display panel of the label and on the back or other panel to specifically describe the risk of fatality from acute exposure in enclosed spaces (83 FR 12254, March 21, 2018; 83 FR 18219, April 26, 2018). CPSC's recommendations also included providing specific examples of spaces in which the product should not be used, incorporating precautionary information for indoor use, and warning against foreseeable inappropriate actions that are not sufficiently protective, such as use of a dust mask to provide protection against vapors. More information on CPSC's updates are in Unit III.A.4.

Several states have taken actions to reduce or make the public aware of risks from methylene chloride. In November 2017, California EPA's Department of Toxic Substances Control (DTSC) proposed to list paint strippers with methylene chloride as a priority product under its Safer Consumer Products regulations (Ref. 11). Methylene chloride is on DTSC's list of candidate chemicals (Ref. 12). If finalized, California's regulation on methylene chloride in paint and coating removers would trigger notification requirements for responsible entities, such as manufacturers and importers to DTSC, and require those companies making paint strippers with methylene chloride to analyze alternatives to determine if methylene chloride is essential and whether there are available alternatives.

B. History of This Rulemaking

This rule finalizes certain parts of the regulation proposed on January 19, 2017 (Ref. 3) with respect to methylene chloride use for consumer paint and coating removal. The proposed rule followed EPA's 2014 final risk assessment of methylene chloride for paint and coating removal. The changes in this final rule from the proposal are discussed in Unit III.

1. TSCA Work Plan and Methylene Chloride Risk Assessment. In 2012, EPA released the initial list of TSCA Work Plan chemicals identified for further assessment under TSCA as part of its chemical safety program (Ref. 1). The process for identifying these chemicals was based on a combination of hazard, exposure, and persistence and bioaccumulation characteristics, and is described in the ''TSCA Work Plan Chemicals: Methods Document'' (Ref. 13). Under the TSCA Work Plan chemical criteria, methylene chloride ranked high for health hazards and exposure potential. Methylene chloride also appeared in the 2014 update of the TSCA Work Plan for Chemical Assessments.

EPA finalized a TSCA Work Plan Chemical Risk Assessment for methylene chloride in paint and coating removal (methylene chloride risk assessment) in August 2014, following the 2013 peer review of the 2012 draft methylene chloride risk assessment. The completed 2014 risk assessment and all documents from the peer review process are available in Docket Number EPA–HQ–OPPT–2012–0725.

The 2014 methylene chloride risk assessment evaluated health risks to consumers, among others, from inhalation exposures from methylene chloride use in paint and coating removal. A more detailed discussion of the risk assessment is included in the proposed rule (Ref. 3 at p. 7470). The risk assessment identified risks of concern following acute (short-term) exposures for consumers and others conducting paint removal with methylene chloride, as well as for exposed bystanders, including residents of homes in which paint removal is conducted. The acute risks identified include death; neurological impacts such as dizziness, incapacitation, loss of consciousness, and coma (Ref. 2).

The assessment identified risks from acute exposures to methylene chloride when used for consumer paint and coating removal, including (Ref. 2):

- Acute risks of neurological effects for consumer users of methylene chloride as a paint remover.
- Acute risks of neurological effects for bystanders (including children) in the location in which paint removers containing methylene chloride are used by residents (*i.e.* consumer paint and coating removal). These risks are also present for exposures to methylene chloride in a location after the paint removal work is complete, because methylene chloride can remain in the air in spaces that are enclosed, confined, or lacking ventilation.

Among the comments on the proposed rule, an overview of which is given in Unit II.B.3., EPA received 28 comments related to the 2014 risk assessment. Twelve mass-mailing campaigns, resulting in over 100,000 public comments, and four individual comments reiterated or supported the conclusions of the risk assessment. A separate individual comment provided a list of additional references documenting the health effects and deaths from methylene chloride use. Other commenters identified what they believe were shortcomings in the risk assessment, such as an underestimation of risk; lack of proper consideration of available data; deficiencies in risk estimation; an overestimation of risk; and lack of verification of data and fatality incident reports. Other comments included additional information from local governments regarding fatalities and adverse effects from use of methylene chloride in paint removers. There were also comments related to carcinogenicity.

The Small Business Advocacy Review (SBAR) Panel convened in support of this action heard from several Small Entity Representatives (SERs) who expressed concerns about the underlying methylene chloride risk assessment (Ref. 14). Many of the

concerns expressed by these SERs were already expressed in the public comments and the peer review comments on the methylene chloride risk assessment. The Summary of External Peer Review and Public Comments and Disposition document in the risk assessment docket (EPA–HQ–OPPT–2012–0725) explains how EPA responded to the comments received.

EPA appreciates the comments supporting the conclusions of the risk assessment and those providing additional information. Some commenters expressed concern about analytical shortcomings in the risk assessment. However, the risk assessment relied on previous assessments that used current hazard and risk assessment methodology documented in EPA guidance. In particular, the hazard and dose response information in the risk assessment were developed by reputable organizations and subject to peer review processes and the cancer descriptor ''likely carcinogenic in humans'' is based on EPA's Toxicological Review using a weight of evidence approach (Ref. 5). The methylene chloride risk assessment was also peer reviewed. The comments on the risk assessment that were received during the comment periods on the proposed rule, and EPA's responses, are in the Response to Comments document (Ref. 15).

2. EPA's proposed rule under TSCA Section 6(a) for methylene chloride. EPA proposed to prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for all consumer and most types of commercial paint removal, and to prohibit most commercial use of methylene chloride for paint and coating removal. Exercising its discretion under section 26(l)(4), EPA is not finalizing the portion of the proposal relating to commercial paint and coating removal today. EPA will address commercial paint and coating removal in the future after soliciting comment, through an ANPRM published elsewhere in this issue of the **Federal Register**, on questions related to a potential training, certification, and limited access program.

EPA proposed a determination of unreasonable risk from the use of NMP in paint and coating removal. However, exercising its discretion under section 26(l)(4), EPA is not finalizing the proposed unreasonable risk determination for NMP in paint and coating removal at this time. EPA intends to incorporate NMP use in paint and coating removal in the risk evaluation for NMP. EPA has concluded that the Agency's assessment of the potential risks from this widely used chemical will be more robust if the potential risks from these conditions of use are evaluated by applying standards and guidance under amended TSCA. In particular, this includes ensuring the evaluation is consistent with the scientific standards in Section 26 of TSCA, including using best available science and systematic review approaches. Additional information on the NMP risk evaluation process, including public meetings, supporting documents, and public comments, is available in Docket Number EPA–HQ–OPPT–2016–0743.

In the proposed rule, EPA described supplemental analyses used to inform certain aspects of risk management for methylene chloride in paint and coating removal (Ref. 3 at p. 7472). These analyses were consistent with the scope of the methylene chloride risk assessment and were based on the peer-reviewed methodology used in the risk assessment (Ref. 3 at p. 7521). While EPA stated in the proposed rule that these analyses would be peer reviewed prior to promulgation of a final rule and received one comment on the proposed rule to that effect, they will not be peer reviewed at this time because EPA is not finalizing regulatory approaches informed by the results of those analyses.

In the proposed rule for methylene chloride in paint and coating removal (Ref. 3), EPA proposed an unreasonable risk determination for commercial uses of methylene chloride in paint and coating removal, including commercial furniture refinishing. EPA, in collaboration with the Small Business Administration's Office of Advocacy, conducted a workshop on furniture refinishing in Boston, MA on September 12, 2017 (82 FR 41256, August 30, 2017) (FRL–9966–83). A transcript of the meeting and speaker presentations are available in Docket Number EPA–HQ–OPPT–2017–0139.

In the proposed rule, EPA requested comment on a process for receiving and evaluating petitions requesting EPA to promulgate statutory exemptions. While EPA is not finalizing an exemption process in this rule, EPA will take the commenters' suggestions into account as EPA considers how to proceed in the future with respect to exemptions under TSCA section 6(g).

3. Public comments and other public input. The proposed rule provided for a 90-day comment period, ending on April 19, 2017; this comment period was extended until May 19, 2017, in response to public requests (82 FR 20310, May 1, 2017) (FRL–9961–66). Even though EPA received requests for a lengthier extension of the comment periods, the Agency concluded that a 30-day extension of the initial comment period was sufficient.

EPA received more than 147,000 comments on the proposed rule. Commenters included private citizens, potentially affected businesses, trade associations, environmental and public health advocacy groups, state and local governments, and other Federal agencies. Most of the comments received through mass mail campaigns and individual public comments supported the rule and urged EPA to prohibit the use of methylene chloride in paint and coating removal to stop putting families, workers and communities at risk, citing the lethality of methylene chloride and fatalities due to paint and coating removal with methylene chloride. Other commenters opposed the rule, and questioned EPA's authority for issuing it. In this preamble, EPA has responded to many of the comments relevant to methylene chloride in consumer paint and coating removal; however, the more comprehensive version of EPA's response to comments related to this final action can be found in the Response to Comments document (Ref. 15). Public interest in the proposed rule extended beyond the comments received on the proposal and at a furniture refinishing workshop described earlier. EPA continued discussions with the public to receive clarification on comments received on the proposed rule. This included meetings requested by W. M. Barr, Breast Cancer Prevention Partners, Natural Resources Defense Council, and Safer Chemicals Healthy Families, to discuss their comments and by families who have lost relatives using methylene chloride in paint removal (Refs. 16, 17, 18 and 19). EPA staff also attended a demonstration hosted by W. M. Barr of various paint and coating removal products (Ref. 20). EPA also consulted with state officials to discuss methylene chloride deaths reported since the proposal. (Ref. 21 and. Ref. 15).

4. Risk evaluation of methylene chloride. EPA announced in December 2016 its designation of methylene chloride as one of the ten chemical substances that will undergo risk evaluation pursuant to section 6(b)(2)(A) of TSCA (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of the risk evaluation under section 6(b)(4)(A) is to determine whether methylene chloride presents an unreasonable risk of injury to health or the environment under the conditions of use. The scope of the methylene

chloride risk evaluation identifies, among other issues, the conditions of use, including manufacturing, processing, and other uses beyond paint removal, such as adhesives and degreasing. If EPA makes a determination of unreasonable risk in the final risk evaluation for any of the other methylene chloride conditions of use included in that risk evaluation, EPA will subsequently issue a section 6(a) rule applying risk management requirements to the extent necessary so that such unreasonable risk is no longer present.

With respect to this final rule for methylene chloride in consumer paint and coating removal, although some commenters questioned EPA's authority to issue a final rule on methylene chloride in paint and coating removal without finalizing the peer review of the supplemental analysis and other commenters urged EPA to use its discretion not to finalize the rule and instead re-evaluate the paint and coating removal use under the risk evaluation under section 6(b)(4)(A), the Agency is exercising its discretion to proceed with this final rule addressing unreasonable risk from methylene chloride in consumer paint and coating removal in accordance with TSCA section 26(l)(4). TSCA section 26(l)(4) (15 U.S.C. 2625(l)(4)) provides that, for a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which a completed risk assessment was published prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, EPA ''may publish proposed and final rules'' under TSCA section 6(a) that are consistent with the scope of the completed risk assessment and with other applicable requirements of TSCA section 6. Methylene chloride was listed in the 2014 update to the TSCA Work Plan and the completed risk assessment was published in 2014. EPA is publishing this final rule under TSCA section 6(a) in accordance with that discretionary authority.

EPA is conducting a risk evaluation of the other conditions of use of methylene chloride under TSCA section 6(b). Additional information regarding the risk evaluation for the other conditions of use of methylene chloride, including public meetings, supporting documents, and public comments, is available in Docket Number EPA–HQ–OPPT–2016–0742.

III. Provisions of This Final Rule

EPA carefully considered all the public comments related to consumer paint and coating removal, as well as other information reasonably available in order to develop this final rule. As indicated previously, in this final action EPA is only addressing methylene chloride in consumer paint and coating removal and will address methylene chloride in commercial paint and coating removal in the future after soliciting comment, through an ANPRM published elsewhere in this issue of the **Federal Register**, on questions related to a potential training, certification, and limited access program. The changes from the proposed action to this final action related to methylene chloride in consumer paint and coating removal are:

- Further clarification in the final rule that paint and coating removers containing methylene chloride cannot be distributed to or by retailers and clarification that a retailer includes a person that distributes in commerce or makes available a chemical substance, mixture or article to consumers, including via internet sales or distribution. Any distributor with at least one consumer client is considered a retailer;
- A decision not to finalize the proposal's requirement for the distribution in commerce of methylene chloride for paint and coating removal in containers with a volume of less than 55 gallons. This requirement would have imposed an additional mitigation measure to address the risks to consumers from methylene chloride in consumer paint and coating removal. However, in this final rule, by eliminating access to methylene chloride for consumer paint and coating removal, via the retailer distribution restrictions, the unreasonable risk from consumer paint and coating removal use is addressed:
- A change in the date that the requirements begin for recordkeeping and for downstream notification of the prohibitions in this rule, from 45 days to 90 days after the effective date of the rule;
- Clarification that the downstream notification requirement should be done through the safety data sheets (SDSs) and provision of language required in the SDSs; and
- A provision allowing required records to be kept either at a company's headquarters or at the facility for which the records were generated.

In addition, this action finalizes the general provisions related to definitions, exports and imports requirements, and enforcement and inspections. These provisions were originally presented in another proposed rule, entitled ''Trichloroethylene; Regulation of Certain Uses Under TSCA section 6(a)'' (Ref. 23). As EPA is newly establishing 40 CFR part 751 to address the regulation of certain chemical substances and mixtures under TSCA section 6, the Agency intended that the general provisions presented in Subpart A of the proposed rule on trichloroethylene apply to all TSCA section 6 chemical substance regulations presented in part 751 (Ref. 23 at p. 91623). EPA's proposed rule on methylene chloride and NMP use in paint and coating removal specifically proposed to build upon the proposed part 751 presented therein, stating that the ''proposal relies on general provisions in the proposed part 751, subpart A, which can be found at 81 FR 91592 (December 16, 2016)'' (Ref. 3 at p. 7519), and that ''40 CFR part 751, as proposed to be added at 81 FR 91592 (December 16, 2016), is proposed to be further amended'' by adding proposed regulatory provisions addressing paint and coating removal uses of methylene chloride and NMP in subparts B and C, respectively (Ref. 3 at p. 7529). Since the trichloroethylene rule has not been finalized, the proposed general provisions are included in this final action with two modifications:

1. Further elaboration of TSCA section 6(a) requirements; and
2. A minor modification to clarify that inspections will be conducted at EPA discretion in accordance with TSCA section 11 and are not required under that authority.

A. Scope and Applicability

In this final action, EPA is regulating the manufacture (including import), processing and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution of methylene chloride for consumer paint and coating removal to and by retailers. The details of the prohibitions and requirements of this final rule are in Unit III.B.

1. Paint and coating removal products. Methylene chloride has been used for decades in paint and coating removal in products intended for both consumer and commercial uses. Paint and coating removal, also referred to as paint stripping, is the process of removing paint or other coatings from a surface. Coatings can include paint, varnish, lacquer, graffiti, polyurethane, or other high-performance or specialty coatings. Surfaces or substrates may be the interior or exterior of buildings, structures, vehicles, aircraft, marine craft, furniture, or other objects and include a variety of materials, such as wood, metals, plastics, concrete, and fiberglass. Paint and coating removal can be conducted in consumer or occupational settings (Ref. 2).

Paint and coatings can be removed by chemical, mechanical, or thermal means. Chemical paint removers can include solvents, such as methylene chloride, or caustic chemicals. Solvents permeate the top of the coating and dissolve the bond between the coating and the substrate (Ref. 22). Following the application of the chemical paint remover, the coating can be more easily peeled, scraped, or mechanically removed from the substrate. Techniques for applying the paint remover chemical include manual coating or brushing, tank dipping, flow-over systems, spray applications (manually or through automation), pouring, and wiping and rolling (manual or automated) (Ref. 2). Methylene chloride has been used to remove paint and coatings from walls, trim, furniture, architectural features, patios or decks, ceilings, bathtubs, floors, civilian aircraft, marine craft, cars, trucks, railcars, tankers, storage vessels, and other vehicles or their component parts to prepare for new coatings. Methylene chloride is typically applied to the surface using a hand-held brush, then left on to soften the old coating, and once curing has occurred, the old coating is scraped or brushed off to clean the surface. For bathtub refinishing, methylene chloride is poured and brushed onto a bathtub using a paintbrush and then scraped from the bathtub after leaving the remover to cure for 20 to 30 minutes (Ref. 4). Consumer use of methylene chloride in paint and coating removal occurs in consumer settings, such as homes, workshops, basements, garages, attics, and outdoors. More information on specific paint removal techniques is in the methylene chloride risk assessment (Ref. 2).

Though some users are switching to substitutes and alternative methods, methylene chloride use continues because it is readily available and works quickly and effectively on nearly all coatings without damaging most substrates. In addition, some users prefer methylene chloride because it is less flammable than some other solvents; however, paint and coating removal products formulated with methylene chloride tend to contain high concentrations of co-solvents that are flammable (Ref. 24). Also, methylene chloride is extremely volatile, has strong fumes, and evaporates quickly so that it must be reapplied for each layer of paint or coating to be removed.

Products intended for one specific type of paint removal project can be easily used in a different setting, including by consumers or hobbyists (Refs. 8, 9, 10, and 25). Additionally, consumers can easily use paint removal products intended for or marketed to professional users since paint removal products are readily available at many big box, local hardware, and paint specialty stores. It should be noted that, while voluntary, several retailers have committed to phase out methylene chloride paint and coating removal products. EPA identified 59 different products for paint and coating removal that contain methylene chloride, formulated by 10 different firms. This is approximately 54% of the total number of paint and coating removal products EPA identified (109 products) (Ref. 24). Paint and coating removers containing methylene chloride are frequently sold at stores that sell products to consumers as well as professional users. Additionally, due to the wide availability of products available on the internet and through various additional suppliers that serve commercial and consumer customers, consumers may foreseeably purchase a variety of paint and coating removal products containing methylene chloride. EPA estimated that approximately 1.3 million consumers and residential bystanders who use or are exposed to methylene chloride through consumer paint and coating removal each year (Ref. 4).

2. Regulatory considerations. To identify the regulatory approach that would address the unreasonable risk presented by methylene chloride in paint and coating removal, EPA analyzed a wide range of regulatory options under section 6(a) in the proposed rule (Ref. 3 at pp. 7472, 7479).

Section 6(c)(2)(A) of TSCA requires EPA, in proposing and promulgating section 6(a) rules, to include a statement addressing certain factors, including the costs and benefits and the cost effectiveness of the regulatory action and of the one or more primary alternative regulatory actions considered by the Administrator. In the proposed rule, EPA described its consideration of several alternative regulatory actions. One of the proposal's primary alternative regulatory actions consisted of: (i) An occupational respiratory protection program for the commercial uses proposed for regulation; (ii) a prohibition on distribution in commerce of methylene chloride for paint and coating removal in containers with a volume of less than 55 gallons and 5 gallons for certain formulations as a means of limiting consumer access to methylene chloride paint and coating removal products (though it did not include restrictions on manufacturing, processing, or distribution of methylene chloride for consumer paint and coating removal); and (iii) required downstream notification.

Since this final rule is not addressing commercial paint and coating removal, the primary alternative regulatory action considered in this final rule is slightly modified from the proposed rule, in that it does not include the occupational respiratory protection program for the commercial uses. Therefore, the primary alternative regulatory action for this final rule consists of: (*a*) Prohibition on distribution in commerce of methylene chloride for paint and coating removal in containers with a volume of less than 55 gallons and 5 gallons for certain formulations; and (*b*) downstream notification.

This final regulatory action is consistent with the regulatory action proposed, which includes a prohibition on the manufacture, processing and distribution in commerce of methylene chloride for consumer paint and coating removal. The primary alternative regulatory action considered would have imposed additional mitigation measures to address the risk to consumers (*i.e.* 55-gallon containers) with additional burdens to processors and distributors; however, by eliminating access to methylene chloride for consumer paint and coating removal, via the retailer distribution restrictions, the unreasonable risk for consumer paint and coating removal use is addressed.

The cost of the final rule is less than the cost of the primary alternative regulatory action considered. EPA's assessment of the costs and benefits of the primary alternative regulatory action are described in the Economic Analysis (Ref. 4) and in Unit III.A.3.

3. TSCA section 6(c)(2) considerations. TSCA section 6(c)(2)(A) requires EPA to consider and publish a statement based on reasonably available information with respect to the chemical's effects on health and the magnitude of human exposure to the chemical. The following is EPA's statement with respect to this final rule.

i. Health effects, exposure, and environmental effects. Methylene chloride is a neurotoxicant that can be acutely lethal. Exposure to methylene chloride can result in a range of adverse health effects, including effects on the nervous system, liver, respiratory system, kidneys, and reproductive systems. Methylene chloride is also a likely human carcinogen. The magnitude of exposure of human beings to methylene chloride use in consumer paint and coating removal is characterized by the number of users, in the case of this final action is estimated to be 1.3 million consumers and

residential bystanders who may not be engaged in paint and coating removal but who are exposed via inhalation to the chemical as a result of consumer paint and coating removal each year (Ref. 4). While methylene chloride is moderately persistent, given its low bioaccumulation and low hazard for aquatic toxicity (Ref. 2), the magnitude of potential environmental impacts on ecological receptors is judged to be low for the environmental releases associated with methylene chloride in consumer paint and coating removal (Ref. 3 at pp. 7468, 7489).

ii. The benefits of the chemical substance or mixture for various uses. Methylene chloride use in paint and coating removal provides benefits for some users because it is readily available and works quickly and effectively on nearly all coatings without damaging most substrates. In addition to paint and coating removal, methylene chloride is a solvent used in a variety of industrial, commercial and consumer use applications, including adhesives, pharmaceuticals, metal cleaning, chemical processing, and feedstock in the production of refrigerant hydrofluorocarbon-32 (Ref. 3 at p. 7467).

iii. The reasonably ascertainable economic consequences of the rule. The reasonably ascertainable economic consequences of this rule include several components, all of which are described in the Economic Analysis for this final rule (Ref. 4). With respect to the anticipated effects of this rule on the national economy, EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers and did not find that there would be a significant impact on the national economy. In addition, EPA considered the employment impacts of this final rule, and found that the direction of change in employment is uncertain, but EPA expects the short-term and longer-term employment effects to be small. EPA estimates that impacts on small businesses are insignificant; EPA estimates that this final rule would affect approximately 7 small entities, with all small businesses having a cost impact of less than 1% of the annual revenue.

With respect to this rule's effect on technological innovation, EPA expects this rule to spur innovation, not hinder it. A prohibition on the manufacture, processing, and distribution of this use of methylene chloride is likely to increase demand for chemical substitutes. This rule is not likely to have significant effects on the environment, though it does present the potential for small reductions in air emissions and soil contamination associated with improper disposal of paint and coating removers containing methylene chloride. The effects of this rule on public health are estimated to be positive, due to the prevention of deaths from consumer exposure to methylene chloride when engaging in paint and coating removal with these products.

The costs and benefits that can be monetized for this rule are described at length in Unit III.F and in the Economic Analysis (Ref. 4). The costs for this rule are estimated to range from $3.8 to $13.6 million annualized over 20 years at a 3% discount rate and $3.8 to $13.7 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be $3.5 million per year over 20 years at 3% and 7% discount rate. This reflects the benefit to consumers.

EPA considered the estimated costs to regulated entities as well as the cost to administer and enforce alternative regulatory actions. The primary alternative regulatory action would not include restrictions on manufacturing, processing, or distribution of methylene chloride for consumer paint and coating removal, but it would prohibit the distribution in commerce of methylene chloride for paint and coating removal in containers with a volume of less than 55 gallons, or 5 gallons for certain formulations. In addition, downstream notification and recordkeeping would be required. The estimated annualized costs of this alternative regulatory action are $5.8 to $16.8 million at 3% and $5.8 to $16.8 million at 7% over 20 years (Ref. 4). The estimated annualized benefits of this alternative regulatory action are $13.0 to $13.1 million at 3% and $12.8 million at 7% over 20 years (Ref. 4). This reflects the $3.5 million per year benefits to consumers noted above and additional benefits to commercial users not targeted by the rule.

The regulatory action finalized today is more cost effective than the primary alternative regulatory action because it achieves the necessary risk reduction for consumers and bystanders with estimated lower costs than the alternative regulatory action. The cost of the alternative regulatory action was estimated to be higher due to the cost of compliance with the container volume requirements which impact commercial users not targeted by the rule. However, the net benefits of the final regulatory action are estimated to be lower than the net benefits of the primary alternative regulatory action, since the primary alternative regulatory action includes benefits from preventing consumer users' exposure to methylene chloride in paint and coating removal, whereas the final regulatory action only includes benefits from eliminating consumer exposures to methylene chloride in paint and coating removal (Ref. 4).

iv. Consideration of alternatives. In addition to the statement of effects and analysis of alternative regulatory actions required under TSCA section 6(c)(2)(A), section 6(c)(2)(C) requires EPA to consider, in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use, whether technically and economically feasible alternatives (*e.g.,* substitute chemicals or alternative methods) that benefit health or the environment will be reasonably available as a substitute when the prohibition or restriction takes effect. In the proposed rule, EPA requested comment on the accuracy of its conclusion that identified substitutes for methylene chloride which are reasonably available and technically and economically feasible, and whether its consideration of chemical substitutes and alternative methods met the requirements of TSCA section 6(c)(2)(C). EPA received several comments on this subject. A majority of commenters indicated that effective, safer alternatives are already available for paint and coating removal, and that EPA has amply satisfied TSCA section 6(c)(2)(C) requirements by identifying a number of available, preferable substitutes, including non-chemical substitutes. Some commenters raised concerns regarding alternatives and claimed EPA failed to satisfy the requirements of TSCA section 6(c)(2)(C) because the Agency erroneously concluded that technically and economically feasible alternative paint strippers exist. EPA disagrees with the comments that for consumer users, available alternative formulations are less safe and more expensive than products with methylene chloride, although EPA does recognize that many factors need to be considered when choosing the appropriate alternative. Substitute products currently are available for consumer users of methylene chloride for paint and coating removal, for a variety of coatings on numerous substrates (Refs. 26 and 27). None of the substitute chemicals already available has the level of toxicity associated with methylene chloride (Ref. 24). As EPA stated in the proposed rule, EPA is aware of technically and economically feasible chemical substitutes or alternative methods that are reasonably available to a consumer for almost every situation in

which methylene chloride is used to remove paints or coatings (Ref. 3 at p. 7485). A summary of comments related to substitute products, and EPA's response, is in the docket for this action (Ref. 15).

4. TSCA section 9(a) analysis. Section 9(a) of TSCA describes the steps EPA must take if the EPA Administrator determines in his discretion that an unreasonable risk may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA. These steps include submitting a report to the agency administering that other law that describes the risk and the activities that present such risk. EPA has not made such a determination, and, in the proposed rule, EPA explained its reasoning. TSCA section 9(d) further instructs the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements. In the proposed rule, EPA described its consultations with CPSC and with OSHA, and letters documenting this consultation are in the docket (Refs. 28 and 29).

CPSC's mission is to protect the public from unreasonable risks of injury or death associated with the use of consumer products under the agency's jurisdiction. CPSC recently updated its guidance on labeling for certain products containing methylene chloride to explain that covered products that do not bear a prominent warning about the risk of death in enclosed spaces are considered misbranded hazardous substances under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1276. One of the specifically-stated purposes for the update was to provide more immediate guidance and clarity to consumers and industry regarding the acute hazards associated with using methylene chloride based paint removers while they remain on the market (83 FR 12254, March 21, 2018). In that guidance, CPSC specifically stated that, ''we do not suggest that labeling will address all hazards EPA identified in its proposed rulemaking'' regarding methylene chloride use in paint and coating removal products. While EPA believes that the updated CPSC labeling guidance, if properly implemented by industry, would prevent some users from using methylene chloride paint and coating removal products in an unsafe manner, for the reasons described in the proposal, it is unlikely to mitigate the unreasonable risks to consumers identified by EPA so that they are no longer unreasonable.

OSHA's mission is to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA's authority does not address unreasonable risk from methylene chloride in consumer paint and coating removal.

In this final rule, EPA has not used its discretion to make a determination that unreasonable risks from the use of methylene chloride in consumer paint and coating removal may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA, and therefore there is no need to submit a report to CPSC or OSHA under TSCA section 9(a).

More than 20 comments were received regarding issues generally related to TSCA section 9. Some commenters supported EPA's decision to not make a determination and submit a report to another agency under TSCA section 9(a). These commenters agreed with EPA's reasoning on the ability of other authorities to address the unreasonable risks identified by EPA. Other commenters contended that the OSHA regulations and the CPSC labeling guidance were sufficient to address the risks EPA identified, especially given the fact that CPSC was in the process of revising its labeling guidance for methylene chloride. Others thought that, to the extent that EPA had identified risks to consumers and others that were not adequately addressed by the current CPSC guidance or OSHA regulations, a report from EPA under TSCA section 9(a) would have alerted the other agencies to the potential deficiencies.

In this case, EPA disagrees with those commenters who thought that EPA must make a determination that other authorities administered by other agencies could address the unreasonable risks identified by EPA.

5. TSCA section 9(b) analysis. TSCA section 9(b) directs EPA to use other authorities administered by EPA to protect against a risk to health or the environment if EPA determines that such risk could be eliminated or reduced to a sufficient extent by actions taken under those authorities, unless EPA determines that it is in the public interest to protect against such risk by actions taken under TSCA.

Although several EPA statutes have been used to limit methylene chloride exposure, as described in the proposed rule, the acute unreasonable risks EPA has identified could not be addressed through these other statutes.

For this reason, the Administrator is not making a determination that the unreasonable risks of injury to health due to acute human lethality from the use of methylene chloride in consumer paint and coating removal could be eliminated or reduced to a sufficient extent by actions taken under other Federal laws administered in whole or in part by EPA. Another commenter stated that EPA failed to meet its obligations under TSCA section 9(b) because EPA did not compare the estimated costs and efficiencies of acting under TSCA or other statutes administered by EPA. EPA disagrees with this commenter's reading of TSCA section 9(b). The obligation to compare costs and efficiencies only arises after EPA has first determined that the identified unreasonable risks could be adequately addressed through action under another statute administered by EPA, and also determines that it is in the public interest to act under TSCA rather than the other statute. In this case, EPA has made neither of those determinations.

6. TSCA section 26(h) considerations. EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science at the time the risk assessment for methylene chloride was conducted. These information sources supply information relevant to whether the use of methylene chloride in paint and coating removal would present an acute unreasonable risk. For example, the 2014 risk assessment used best available science and methods, was peer reviewed, and went through a public comment process (Ref. 2).

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of this final rule, in the proposed rule (Ref. 3 at p. 7521) and in the references cited throughout the preamble of the proposed and this final rule. While EPA recognizes, based on the available information, that there is variability and uncertainty with regard to EPA's risk assessment of the use of methylene chloride in paint and coating removal, those uncertainties were identified in the proposed rule (Ref. 3 at p. 7491) and were characterized and documented in the methylene chloride risk assessment (Ref. 2). The extent to which the various information, procedures, measures, methods, protocols, methodologies or models, as applicable, used in EPA's decision have

been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rule. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and EPA's response to comments, is in Docket Number EPA–HQ–OPPT–2012–0725.

EPA received several public comments on the proposed rule relating to the scientific information, technical procedures, measures, methods, protocols, methodologies, and models used by EPA. Commenters disagreed on whether EPA's assessment of methylene chloride was scientifically rigorous, with some praising EPA for a strong scientific underpinning for the regulation and others stating that EPA did not use best available science by incorporating exposure data that were out of date or by not correctly using a weight-of-evidence for some findings. EPA disagrees with commenters that the exposure data should not be used, or that weight-of-evidence was applied incorrectly. This action based on acute unreasonable risks is supported by a risk assessment that underwent peer review and a public comment process. More details on these comments and EPA's response is in the Response to Comments document (Ref. 15).

B. Prohibitions and Requirements

This final rule:

1. Prohibits the manufacturing, processing, and distribution in commerce of methylene chloride for paint and coating removal for all consumer uses;

2. Prohibits the distribution in commerce of methylene chloride in paint and coating removal products to and by retailers. A retailer is any person or business entity that distributes or makes available paint and coating removal products to consumers, including through ecommerce internet sales or distribution. If a person or business entity distributes or makes available any methylene chloride-containing paint or coating removal product to at least one consumer, then it is considered a retailer. For a distributor not to be considered a retailer, he/she must distribute or make available methylene chloride-containing paint and coating removal products solely to commercial or industrial end users or businesses. This additional provision clarifies the proposed regulation and ensures that retailers will not be able to purchase for sale or distribution to consumers, or to make available to consumers, paint and coating removal products containing methylene chloride;

3. Requires manufacturers, processors, and distributors of methylene chloride for any use, excluding retailers, to provide downstream notification of the prohibitions in this final rule through SDSs by adding to sections 1(c) and 15 of the SDS the following language: ''This chemical/product is not and cannot be distributed in commerce (as defined in TSCA section 3(5)) or processed (as defined in TSCA section 3(13)) for consumer paint or coating removal.''; and

4. Requires recordkeeping relevant to these prohibitions.

The prohibition on manufacturing, processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers, will take effect 180 days after the effective date of this final rule. EPA believes this is a reasonable transition period and will not result in additional costs of collecting and disposal of any stranded products. EPA recognizes that some individual retailers might not be as efficient with their inventory management and that could result in stranded products and some additional cost for disposal of such products.

Each person who manufactures, processes, or distributes in commerce methylene chloride is required to provide downstream notification of the restrictions in this rule through SDSs, effective 90 days following the effective date of this final rule. Downstream notification ensures that processors and distributors are aware of the restrictions for methylene chloride in paint and coating removal; enhances the likelihood that the risks associated with this use of methylene chloride are addressed throughout the supply chain; and also streamlines compliance and enhances enforcement, since compliance is improved when rules are clearly and simply communicated (Ref. 30).

After 90 days following the effective date of this final rule, each person who manufactures, processes, or distributes in commerce methylene chloride must retain documentation of the entities to whom methylene chloride was shipped, a copy of the downstream notification provided, and the amount of methylene chloride shipped. The documentation must be retained for 3 years from the date of shipment. Based on a public comment, EPA added to the final rule a provision to keep the required records either at the company's headquarters or at the facility for which the records were generated.

This final rule also includes a definition of retailers and consumer paint and coating removal in order to be responsive to comments received requesting EPA to provide more clarity regarding the regulated distribution to consumers.

C. Downstream Notification

EPA received four comments related to downstream notification of methylene chloride restrictions, one of which took issue with EPA's approach. This commenter stated that EPA lacks the authority to require downstream notification and recordkeeping beyond the scope of the conditions of use identified in its unreasonable risk finding. While EPA recognizes there are companies likely manufacturing, processing, or distributing methylene chloride or products containing methylene chloride for uses that will not be regulated under this final rule, EPA disagrees with the commenter's reading of the statute that section 6(a)(3) downstream notification requirements do not apply to conditions of use other than those for which EPA is addressing the unreasonable risk for a chemical substance.

TSCA section 6(a) requires EPA to impose one or more of the specified requirements to the extent necessary so that a chemical substance no longer presents an unreasonable risk identified by EPA. Here, EPA has determined that the downstream notification provisions are necessary to prevent the identified unreasonable risk. Without downstream notification, manufacturers, processors, and distributors, are likely to be unfamiliar with the prohibitions against distribution of methylene chloride-containing paint and coating removal products to and by retailers. As such, the notification helps ensure that all downstream entities are aware of the prohibitions. Further, notification throughout the supply chain streamlines compliance and enhances enforcement, since compliance can be improved when rules are clearly and simply conveyed. Moreover, under section 6, EPA has authority to require reporting and recordkeeping related to the regulatory requirements imposed by EPA under section 6. See, *e.g.,* 55 FR 222 (EPA's section 6 action on hexavalent chromium in cooling towers).

Some commenters requested more clarity from EPA regarding how to use the SDS for downstream notification. In this final rule, EPA is specifying the changes to the SDS needed for the downstream notification. Specifically, EPA is requiring the addition of the following language to sections 1(c) and 15 of the SDS: ''This chemical/product is not and cannot be distributed in commerce (as defined in TSCA section

3(5)) or processed (as defined in TSCA section 3(13)) for consumer paint or coating removal.''

The effective date of the requirement for this notification and the associated recordkeeping is 90 days after the effective date of this action. The proposed rule would have had these requirements take effect 45 days after the effective date of this final rule. On further reflection, EPA has determined that 90 days is a more reasonable transition period. Regulated entities need only to provide additional information on their SDS, which is routinely produced and updated.

D. Import Certification

Persons who import any chemical substance governed by a final TSCA section 6 rule are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. To comply with the import certification requirements, importers (or their agents) will be required to certify that the shipment of methylene chloride complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export methylene chloride are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

E. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under TSCA section 6. Therefore, any failure to comply with this rule when it becomes effective would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty for each violation. Each day in violation of this final rule, after the effective date could constitute a separate violation. Knowing or willful violations could lead to the imposition of criminal penalties for each day of violation and imprisonment. In addition, other remedies are available to EPA under TSCA.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to ''any person'' who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

F. Costs, Benefits, and Impacts

EPA evaluated the costs and benefits of this final action, which is presented in the Economic Analysis (Ref. 4) and summarized in this unit.

1. Overview of public comments. Of the nine comments received related to the Economic Analysis, three comments supported EPA's Economic Analysis. One commenter stated that EPA conducted a thorough cost-benefit analysis, and appropriately provided an in depth qualitative description of health benefits. Other commenters pointed out perceived shortcomings of the Economic Analysis conducted by the Agency, with one commenter calling for the underlying Economic Analysis data to be more comprehensive, accurate, and reflective of current industry practices. These comments, and EPA's response, are in the Response to Comments document in this docket (Ref. 15).

2. Costs. The details of the costs of this final rule are summarized in Unit I.E and discussed in the Economic Analysis (Ref. 4). Under this final rule, costs to users of paint and coating removal products containing methylene chloride are approximately $3.8 to $13.6 million annualized for 20 years at a discount rate of 3% and $3.8 to $13.7 million at a discount rate of 7%. Costs to manufacturers of methylene chloride are $50 and $60 annualized for 20 years at a discount rate of 3% and 7% respectively. Costs for processors, including those associated with reformulation, downstream notification and label changes, on an annualized basis over 20 years are $ 15,000 to $25,000 using 3% and $20,000 to $34,000 using 7% discount rates. Agency costs for enforcement are estimated to be approximately $147,000 and $145,000 annualized over 20 years at 3% and 7%, respectively. Total costs of this final rule are estimated to be approximately $3.8 to $13.6 million annualized over 20 years at 3% and $3.8 to $13.7 million annualized over 20 years at 7%.

3. Benefits. EPA is not fully able to quantify the full monetary benefits that would accrue from preventing all consumer deaths due to methylene chloride in paint and coating removal and the impacts of the substitution effect by switching from methylene chloride to alternative chemicals and methods. Similarly, EPA is not able to monetize the benefits that would accrue from preventing non-fatal and non-cancer effects from exposure to methylene chloride in paint and coating removal. The subset of benefits that can be monetized from mitigating the risks from methylene chloride in paint and coating removal for consumers finalized by this rule are potential avoidance of fatalities and are estimated to be approximately $3.5 million (annualized at 3% and 7% over 20 years) (Ref. 4).

4. Comparison of benefits and costs. The monetized subset of benefits from preventing the risks resulting from methylene chloride in consumer paint and coating removal are less than the estimated monetary costs.

5. Impacts on the national economy, small businesses, technological innovation, the environment, and public health. As summarized in Unit I.E and III.A.3 and described in the Economic Analysis (Ref. 4), EPA considered the anticipated effects of this final rule. With respect to the national economy, as EPA indicated in the proposed rule (Ref. 3 at p. 7489), EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers. EPA did not find that there would be a significant impact on the national economy (Ref. 4). In addition, EPA considered the employment impacts of this final rule, and found that the direction of change in employment is uncertain, but EPA expects the short term and longer-term employment effects to be small (Ref. 4). EPA estimates that impacts on small businesses are insignificant; EPA estimates that this final rule would affect approximately 7 small entities, with all small businesses having a cost impact of less than 1% of the annual revenue, (Ref. 4). As EPA indicated in the proposed rule, with respect to this rule's effect on technological innovation, EPA expects this action to spur innovation, not hinder it. A prohibition on the manufacturing, processing, and distribution in commerce of methylene chloride for consumer paint and coating removal is likely to increase demand for alternatives (Ref. 4). This rule is not likely to have significant effects on the environment, though it does present the potential for small reductions in air emissions and soil contamination associated with improper disposal of paint and coating removers containing

methylene chloride. The effects of this rule on public health are estimated to be positive, due to the prevention of deaths and nonlethal adverse health effects due to consumer exposure to methylene chloride when engaging in paint and coating removal (Ref. 3 at p. 7489).

6. Impacts of the final and alternative regulatory actions. The costs of this final rule are estimated to include costs to users of paint and coating removal products containing methylene chloride, product reformulation costs, downstream notification costs, recordkeeping costs, and Agency costs.

The primary alternative regulatory action considered by EPA would not include restrictions on manufacturing, processing, or distribution of methylene chloride for consumer paint and coating removal, but it would require the distribution in commerce of methylene chloride for paint and coating removal in containers with a volume of no less than 55 gallons, or 5 gallons for certain formulations. In addition, downstream notification and recordkeeping would be required. As required under TSCA section 6(c), EPA analyzed the costs and benefits of this primary alternative action and found that this approach would introduce additional burdens to processors and distributors who would bear the cost of ensuring products are in 55- and 5-gallon containers, as appropriate. In addition, the 55-gallon volume restriction would effectively bar most commercial users in the professional contractor, bathtub refinishing, and graffiti removal sectors given the increased cost and, for some users, impracticality of using large containers.

The regulatory action finalized today is more cost effective because it achieves the necessary risk reduction for consumers and bystanders with estimated lower costs than the alternative regulatory action. The cost of the alternative regulatory action was estimated to be higher due to the cost of compliance with the container volume requirements. However, the net benefits of the final regulatory action are estimated to be lower than the net benefits of the primary alternative regulatory action, since the primary alternative regulatory action includes benefits from preventing consumer users' exposure, whereas the final regulatory action only includes benefits from eliminating consumer exposures to methylene chloride in paint and coating removal. A summary of the findings of this analysis are in III.A.3 and in the Economic Analysis (Ref. 4).

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Work Plan for Chemical Assessments: 2014 Update. *https://www.epa.gov/sites/production/files/2015-01/documents/tsca_work_plan_chemicals_2014_update-final.pdf.* Retrieved December 4, 2018.
2. EPA. TSCA Work Plan Chemical Risk Assessment Methylene Chloride: Paint Stripping Use. CASRN 75–09–2. EPA Document# 740–R1–4003. August 2014. Office of Chemical Safety and Pollution Prevention. Washington, DC *https://www.epa.gov/sites/production/files/2015-09/documents/dcm_opptworkplanra_final.pdf.* Retrieved December 4, 2018.
3. EPA. Methylene Chloride and N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a); Proposed Rule. **Federal Register** (82 FR 7464, January 19, 2017) (FRL–9958–57).
4. EPA. Economic Analysis of Final Rule TSCA Section 6 Action on Methylene Chloride in Paint and Coating Removal (EPA Docket EPA–HQ–OPPT–2016–0231; RIN 2070–AK07). Office of Pollution Prevention and Toxics. Washington, DC.
5. EPA. Toxicological Review of Methylene Chloride (CAS No. 75–09–2). EPA/635/R–10/003F. Integrated Risk Information System, Washington, DC. November 2011.
6. EPA. Public Database 2016 Chemical Data Reporting (May 2017 Release). Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics. Retrieved from *https://www.epa.gov/chemical-data-reporting.*
7. EPA. Scope of the Risk Evaluation for Methylene Chloride (Dichloromethane, DCM) EPA–HQ–OPPT–2016–0742–0061. Office of Pollution Prevention and Toxics. Washington, DC. June 2017.
8. OSHA. ''Lethal Exposure to Methylene Chloride during Bathtub Refinishing.'' *OSHA Fatal Facts.* 2016. *https://www.osha.gov/Publications/OSHA3883.pdf.*
9. Centers for Disease Control and Prevention (CDC). ''Fatal Exposure to Methylene Chloride Among Bathtub Refinishers—United States, 2000–2011.'' *Morbidity and Mortality Weekly Report.* February 24, 2012. Vol 61(7), p 119–122.
10. EPA. Memo: Methylene Chloride Paint and Coating Removal Fatalities: 2017–2018. (EPA Docket EPA–HQ–OPPT–2016–0231). Office of Pollution Prevention and Toxics. Washington, DC.
11. California Code of Regulations. ''*Proposal to List Paint or Varnish Strippers Containing Methylene Chloride as a Priority Product.*'' Proposed Regulation Text. November 2017. *https://calsafer.dtsc.ca.gov/cms/commentpackage/?rid=12734.*
12. ''Proposition 65 Law and Regulations.'' Nov 14, 2016. *http://www.oehha.ca.gov/prop65/law/P65law72003.html.*
13. EPA. TSCA Work Plan Chemicals: Methods Document. *http://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf. Retrieved February 25, 2016.*
14. EPA. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on the Toxic Substances Control Act (TSCA) Section 6(a) as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act for Methylene Chloride and N-Methylpyrrolidone (NMP) in Paint Removers. Office of Chemical Safety and Pollution Prevention. Washington, DC. 2016.
15. EPA. Response to Comments on the Final Methylene Chloride Rule; Regulation of Certain Uses Under TSCA Section 6(a) (EPA Docket EPA–HQ–OPPT–2016–0231). Office of Pollution Prevention and Toxics. Washington, DC.
16. EPA. Outreach Meeting with W. M. Barr and EPA to discuss the Methylene Chloride in Paint and Coating Removal. (EPA Docket EPA–HQ–OPPT–2016–0231). Office of Pollution Prevention and Toxics. Washington, DC.
17. EPA Outreach Meeting with Breast Cancer Prevention Partners (BCPP) and Safer Chemicals Healthy Families (SCHF) and EPA to discuss the Methylene Chloride in Paint and Coating Removal. (EPA Docket EPA–HQ–OPPT–2016–0231) Office of Pollution Prevention and Toxics. Washington, DC.
18. EPA Outreach Meeting with Natural Resources Defense Council and Safer Chemicals Healthy Families (SCHF) and EPA to discuss the Methylene Chloride in Paint and Coating Removal. (EPA Docket EPA–HQ–OPPT–2016–0231) Office of Pollution Prevention and Toxics. Washington, DC.
19. EPA Meeting with families who have lost relatives using methylene chloride in paint removal. (EPA Docket EPA–HQ–OPPT–2016–0231) Office of Pollution Prevention and Toxics. Washington, DC.
20. EPA. Demonstration of Paint Removing products by W.M. Barr. (EPA Docket EPA–HQ–OPPT–2016–0231) Office of Pollution Prevention and Toxics. Washington, DC.
21. EPA. Outreach Meeting with Federal and State Agencies on Recent Methylene Chloride Fatalities. (EPA Docket EPA–HQ–OPPT–2016–0231). Office of Pollution Prevention and Toxics. Washington, DC.
22. ''Paint Strippers, Types of Strippers.'' *PaintPRO,* Vol. 3, No. 3. June 2000. *http://www.paintpro.net/Articles/PP303/PP303_strippers.cfm.*

23. EPA. Trichloroethylene; Regulation of Certain Uses Under TSCA Section 6(a); Proposed Rule. **Federal Register** (81 FR 91592, December 16, 2016) (FRL–9949–86).
24. EPA. Analysis Report of Chemical Alternatives for Use of Methylene Chloride- and N-Methylpyrrolidone-based Paint Removers: Hazard and Exposure Concerns. 2016.
25. National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA). Hazard Alert: Methylene Chloride Hazards for Bathtub Refinishers. January 2013. *http://www.cdc.gov/niosh/docs/2013-110/ Accessed April 14, 2016.*
26. Morris, M.; Wolf, K. Institute for Research and Technical Assistance. ''Methylene Chloride Consumer Product Paint Strippers: Low-VOC, Low Toxicity Alternatives Prepared For: Cal-EPA's Department of Toxic Substances Control.'' May 2006. *http://www.irta.us/Methylene%20Chloride%20Consumer%20Product%20Paint%20Strippers%20REPORT%20ONLY.pdf.*
27. Jacobs, Molly; Bingxuan Wang, Mark Rossi. ''Alternatives to Methylene Chloride in Paint and Varnish Strippers.'' BizNGO. (2015): 1–44. *http://www.bizngo.org/resources/entry/resource-methylene.*
28. United States Consumer Product Safety Commission (CPSC). Letter to James J. Jones from Patricia H. Adkins. April 19, 2016.
29. U.S. Department of Labor—Occupational Safety and Health Administration (OSHA). Letter to James J. Jones from David Michaels, Ph.D., MPH. March 31, 2016.
30. Giles, C. EPA. ''Next Generation Compliance.'' Environmental Forum. October 2013, p 22–26. Washington, DC.
31. EPA. Final Regulatory Flexibility Analysis for Methylene Chloride; Regulation of Certain Uses Under TSCA Section 6(a); Final Rule; RIN 2070–AK07. Office of Chemical Safety and Pollution Prevention. Washington, DC. 2019.
32. EPA. Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA). March 2019.
33. EPA. Section 6(a) Rulemakings under the Toxic Substances Control Act (TSCA) Paint Removers & TCE Rulemakings E.O. 13132: Federalism Consultation. May 13, 2015.
34. EPA. Notification of Consultation and Coordination on Proposed Rulemakings under the Toxic Substances Control Act for 1) Methylene Chloride and n-Methylpyrrolidone in Paint Removers and 2) Trichloroethylene in Certain Uses. April 8, 2015.
35. EPA. Paint Removers: Methylene Chloride and N-Methylpyrrolidone—Community Webinar. May 28, 2015.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action, which is available in the docket and summarized in Units I.E., III.A.3., and III.G. (Ref. 4).

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017). Details on the estimated costs of this final rule can be found in EPA's analysis (Ref. 4) of the potential costs and benefits associated with this action, which is available in the docket and is summarized in Unit III.F.

C. Paperwork Reduction Act (PRA)

The information collection requirements in this rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2556.02 and OMB Control No. 2070–0204. You can find a copy of the ICR in the docket for this rule (Ref. 32), and it is briefly summarized here. This rule does not require the regulated entities to submit information to EPA.

The information collection activities required by this rule include a downstream notification requirement and a recordkeeping requirement. The downstream notification would require companies that ship methylene chloride to notify companies downstream in the supply chain through the SDS of the prohibitions described in this final rule. The recordkeeping requirement mandates companies that ship methylene chloride to retain certain information at the company headquarters, or at the facility for which the records were generated, for three years from the date of shipment. These information collection activities are necessary in order to enhance the prohibitions under this rule by ensuring awareness of the prohibitions throughout the methylene chloride supply chain, and to provide EPA with information upon inspection of companies downstream who purchased methylene chloride. This rule does not require confidential or sensitive information to be submitted to EPA or downstream companies. EPA believes that these information collection activities would not significantly impact the regulated entities as the downstream notification requirements is a simple modification to the SDS and recordkeeping requirements include information that is part of the normal course of business.

Respondents/affected entities: Methylene chloride manufacturers, processors, and distributors.

Respondent's obligation to respond: Respondents are not obligated to respond or report to EPA, but must notify downstream users and maintain required records.

Estimated number of respondents: 138.

Frequency of response: On occasion to third parties as needed.

Total estimated annual burden: 69 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated annual cost: $3,712.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The OMB control numbers for certain EPA regulations are listed in 40 CFR part 9.

D. Regulatory Flexibility Act (RFA)

Pursuant to sections 603 and 609(b) of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rulemaking and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. Summaries of the IRFA and Panel recommendations are presented in the proposed rulemaking (Ref. 3).

As required by section 604 of the RFA, EPA prepared a final regulatory flexibility analysis (FRFA) for this action (Ref. 31). The FRFA addresses the issues raised by public comments on the IRFA for the proposed rulemaking. The

complete FRFA is available for review in the docket and is summarized here.

1. Statement of need and rule objectives. The purpose of this action is to prevent acute fatalities from the use of methylene chloride in consumer paint and coating removal. Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant, under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance no longer presents such risk.

With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which a completed risk assessment was published prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (which includes methylene chloride), TSCA section 26(l)(4) (15 U.S.C. 2625(l)(4)) provides that EPA ''may publish proposed and final rules'' under TSCA section 6(a) that are consistent with the scope of the completed risk assessment and consistent with other applicable requirements of TSCA section 6. EPA is publishing this final rule under TSCA section 6(a) in accordance with that discretionary statutory authority.

Based on EPA's analysis of consumer population exposures to methylene chloride in paint and coating removal, EPA is making a final determination that the use of methylene chloride in consumer paint and coating removal presents an unreasonable risk of injury to health due to acute human lethality. This final rule addresses that unreasonable risk.

EPA believes this rule will be effective in preventing unreasonable risk from the use of methylene chloride in consumer paint and coating removal. This final rule is informed by the TSCA Work Plan Chemical Risk Assessment Methylene Chloride: Paint Stripping Use, as well as information gathered from the comments on the proposed rulemaking, SBAR panel, and public meetings. For more information on the proposed rulemaking, SBAR panel and outreach efforts for this action, see the docket for this rulemaking (Docket ID Number EPA–HQ–OPPT–2016–0231).

2. Significant comments on the IRFA. EPA received no comments on the IRFA. However, EPA did receive comments related to the regulatory options selected, alternative regulatory actions, and impacts on small businesses. The comments received on the proposed rule and EPA's responses as they relate to this final action are summarized in Unit II.B.3 and in further detail in the Response to Comment Document in the docket (Ref. 15).

3. SBA Office of Advocacy comments and EPA response. EPA received no comments from SBA on the IRFA. SBA, however, did provide comments on the proposed rule. Because EPA is not finalizing the proposed regulations on NMP, EPA is not responding to the comments received regarding NMP at this time and will take them into consideration during the risk evaluation for that chemical. SBA's comments which pertain to methylene chloride consumer paint and coating removal, and EPA's responses, are in the Response to Comments document for this rule (Ref. 15) and in the FRFA (Ref. 31).

4. Estimate of the number of small entities to which the final rule applies. EPA estimates that this final rule would affect approximately 7 small entities, specifically, a small number of formulators of paint and coating removal products that contain methylene chloride (Ref. 32). The cost to these small businesses will be the cost of reformulating products sold to consumer users and the cost of complying with the downstream notification requirements. In addition, cost impacts of a prohibition on sale of paint and coating remover products containing methylene chloride for consumer uses on retailers of such products is not included in this analysis, as EPA is uncertain about the effect of possible increased sales of alternative paint and coatings removal products. Some of the affected retailers may be small businesses and these retailers are not included in this discussion.

Some small business may be negatively affected by the rule. Negative impacts may include increasing production of substitute chemicals to replace some of the production of methylene chloride, or updating SDS sheets, etc. EPA does not expect these impacts to be costly but as they are tasks that will take time, effort, and resources the firms would not otherwise expend in such a manner, EPA sees them as negative impacts on the firms. Another negative impact may include a small business formulator exiting the paint and coating removal product market entirely.

5. Projected reporting, recordkeeping and other compliance requirements of the final rule. i. Compliance requirements. To address the unreasonable risks that EPA has identified for methylene chloride in consumer paint and coating removal, EPA is finalizing under section 6 of TSCA regulations that prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for all consumer paint and coating removal. The prohibition on distribution in commerce of methylene chloride in paint and coating removal for all consumer uses includes a prohibition on the distribution of methylene chloride for paint and coating removal to and by retailers. EPA is also requiring manufacturers (including importers), processors, and distributors, except for retailers, of methylene chloride for any use to provide downstream notification of these requirements and prohibitions throughout the supply chain via simple modifications to the SDS; and requiring limited recordkeeping.

ii. Classes of small entities subject to the compliance requirements. The small entities that are potentially directly regulated by this rule are small entities that are formulators of paint and coating removal products that contain methylene chloride.

iii. Professional skills needed to comply. For this rule, complying with the prohibitions, the downstream notification, and the recordkeeping requirements involve no special skills.

6. Steps taken to minimize economic impact to small entities. i. Small Business Advocacy Review Panel. As required by section 609(b) of the RFA, EPA also convened an SBAR Panel during the development of the proposed rule to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small-entity comments on issues related to elements of an IRFA. A copy of the full SBAR Panel Report (Ref. 14) is available in the rulemaking docket. The Panel recommended that EPA seek additional information in five specific areas: Exposure information, regulatory options, alternatives, cost information, and risk assessment. The comments received on the proposed rule and EPA's responses as they pertain to consumer paint and coating removal are summarized in Unit II.B.3 and in further detail in the Response to Comments Document in the docket (Ref. 15).

ii. Alternatives considered. EPA considered a wide variety of risk reduction options. The primary alternative regulatory action would not include restrictions on manufacturing, processing, or distribution of methylene chloride for consumer paint and coating

removal, but it would require the distribution in commerce of methylene chloride for paint and coating removal in containers with volumes no less than 55 gallons, or 5 gallons for certain formulations. In addition, downstream notification and recordkeeping would be required. As required under TSCA section 6(c), EPA analyzed the costs and benefits of the alternative regulatory action (Ref. 4). EPA finds that the primary alternative regulatory action would introduce additional burdens to processors and distributors who would bear the costs of ensuring products are in 55 and 5-gallon containers, as appropriate. In addition, the 55-gallon volume restriction would effectively bar most commercial users in the professional contractor, bathtub refinishing, and graffiti removal sectors given the increased cost. The final rule is more cost effective than the primary alternative regulatory action considered. A summary of the findings of this analysis are in III.A.3 and in the Economic Analysis (Ref. 4).

7. Small Business Compliance Guides. EPA is preparing a Small Entity Compliance Guide to help small entities comply with this rule. EPA expects that this guide will be made available on the EPA website prior to the effective date of this final rule.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The requirements of this action would primarily affect manufacturers, processors, and distributors of methylene chloride. The total estimated annualized cost of this final rule are $3.8 to $13.6 million and $3.8 to $13.7 million annualized over 20 years at 3% and 7%, respectively (Ref. 4), which does not exceed the inflation-adjusted unfunded mandate threshold of $154 million.

F. Executive Order 13132: Federalism

EPA has concluded that this action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This regulation will not preempt state law. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Neither pause preemption nor permanent preemption apply to the restrictions proposed or to this final regulation, because this TSCA section 6(a) rule is promulgated under TSCA section 26(l)(4). In accordance with section 26(l)(4), this rulemaking is consistent with the scope of the 2014 risk assessment of methylene chloride for paint and coating removal, as well as other applicable requirements of TSCA section 6, and is not based on a risk evaluation conducted under TSCA section 6(b). Therefore, EPA believes that this rule will not preempt a state law or action on methylene chloride for consumer paint and coating removal under either section 18(a)(1)(B) (under which the extent of permanent preemption is ''consistent with the scope of the risk evaluation under section (6)(b)(4)(D)'') or section 18(b) (under which the extent of pause preemption is tied to the ''scope of the risk evaluation pursuant to section 6(b)(4)(D)'').

Although this rule does not have federalism implications, the Agency consulted with state and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA invited the following national organizations representing state and local elected officials to a meeting on May 13, 2015, in Washington DC: National Governors Association; National Conference of State Legislatures, Council of State Governments, National League of Cities, U.S. Conference of Mayors, National Association of Counties, International City/County Management Association, National Association of Towns and Townships, County Executives of America, and Environmental Council of States. A summary of the meeting with these organizations, including the views that they expressed, is available in the docket (Ref. 33).

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rulemaking would not have substantial direct effects on tribal government because methylene chloride is not manufactured, processed, or distributed in commerce by tribes. EPA did not receive any information during the public comment period to alter EPA's understanding that this action has no substantial direct effects on tribal governments. Tribes do not regulate methylene chloride, and this rulemaking would not impose substantial direct compliance costs on tribal governments. Thus, E.O. 13175 does not apply to this action. EPA nevertheless consulted with tribal officials during the development of this action, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (Ref. 34).

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessment of exposure by children to methylene chloride in paint and coating removal is contained in the proposed rule (Ref. 3 at pp. 7462, 7476, and 7503). Supporting information on methylene chloride exposures and the health effects of methylene chloride exposure by children is available in the Toxicological Review of Methylene Chloride (Ref. 5) and the methylene chloride risk assessment (Ref. 2).

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution in Commerce, or Use

This final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution in commerce, or use. This rule is intended to protect against risks from methylene chloride in paint and coating removal, and does not affect the use of oil, coal, or electricity.

J. National Technology Transfer and Advancement Act (NTTAA)

This final rule does not involve technical standards, and is therefore not subject to considerations under NTTAA section 12(d), 15 U.S.C. 272.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S. EPA places particular emphasis on the public

health and environmental conditions affecting minority populations, low-income populations, and indigenous peoples. In recognizing that these populations frequently bear a disproportionate burden of environmental harms and risks, EPA works to protect them from adverse public health and environmental effects (Ref. 35).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping requirements.

Dated: March 15, 2019.

Andrew Wheeler,

Administrator.

■ Therefore, add 40 CFR part 751 to read as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

Subpart A—General Provisions

Sec.
751.1 Purpose.
751.5 Definitions.
751.7 Exports and imports.
751.9 Enforcement and inspections.

Subpart B—Methylene Chloride

751.101 General.
751.103 Definitions.
751.105 Consumer paint and coating removal.
751.107 Downstream notification.
751.109 Recordkeeping.

Subpart C—[Reserved]

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

Subpart A—General Provisions

§ 751.1 Purpose.

This part sets forth requirements under section 6(a) of the Toxic Substances Control Act, 15 U.S.C. 2605(a), regulating the manufacture (including import), processing, distribution in commerce, use, or disposal of certain chemical substances and mixtures in order to address unreasonable risks to the extent necessary so that the chemical substance or mixture no longer presents such risk.

§ 751.5 Definitions.

The definitions in section 3 of the Toxic Substances Control Act, 15 U.S.C. 2602, apply to this part except as otherwise established in any subpart under this part.

Act or *TSCA* means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

CASRN means Chemical Abstracts Service Registry Number.

EPA means the U.S. Environmental Protection Agency.

Person means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal government.

§ 751.7 Exports and imports.

(a) *Exports.* Persons who intend to export a chemical substance identified in any subpart under this part are subject to the export notification provisions of section 12(b) of the Act. The regulations that interpret section 12(b) appear at 40 CFR part 707, subpart D.

(b) *Imports.* Persons who import a substance identified in any subpart under this part are subject to the import certification requirements under section 13 of the Act, which are codified at 19 CFR 12.118 through 12.127. See also 19 CFR 127.28.

§ 751.9 Enforcement and inspections.

(a) *Enforcement.* (1) Failure to comply with any provision of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(b) *Inspections.* EPA may conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this part.

Subpart B—Methylene Chloride

§ 751.101 General.

This subpart sets certain restrictions on the manufacture (including import), processing, and distribution in commerce of methylene chloride (CASRN 75–09–2) for consumer paint and coating removal to prevent unreasonable risks of injury to health due to acute human lethality.

§ 751.103 Definitions.

The definitions in subpart A of this part apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

Consumer paint and coating removal means paint and coating removal performed by any natural person who uses a paint and coating removal product for any personal use without receiving remuneration or other form of payment.

Distribute in commerce has the same meaning as in section 3 of the Act, except that the term does not include retailers for purposes of §§ 751.107 and 751.109.

Paint and coating removal means application of a chemical or use of another method to remove, loosen, or deteriorate any paint, varnish, lacquer, graffiti, surface protectants, or other coating from a substrate, including objects, vehicles, architectural features, or structures.

Retailer means a person who distributes in commerce or makes available a chemical substance or mixture to consumer end users, including e-commerce internet sales or distribution. Any distributor with at least one consumer end user customer is considered a retailer. A person who distributes in commerce or makes available a chemical substance or mixture solely to commercial or industrial end users or solely to commercial or industrial businesses is not considered a retailer.

§ 751.105 Consumer paint and coating removal.

(a) After November 22, 2019, all persons are prohibited from manufacturing, processing and distributing in commerce methylene chloride for consumer paint and coating removal.

(b) After November 22, 2019, all persons are prohibited from distributing in commerce methylene chloride, including any methylene chloride containing products, for paint and coating removal to retailers.

(c) After November 22, 2019, all retailers are prohibited from distributing in commerce methylene chloride, including any methylene chloride containing products, for paint and coating removal.

§ 751.107 Downstream notification.

Each person who manufactures, processes, or distributes in commerce methylene chloride for any use after August 26, 2019 must, prior to or concurrent with the shipment, notify companies to whom methylene chloride is shipped, in writing, of the restrictions described in this subpart. Notification must occur by inserting the following text in the Safety Data Sheet (SDS) provided with the methylene chloride or with any methylene chloride containing product:

(a) SDS Section 1.(c): ''This chemical/product is not and cannot be distributed in commerce (as defined in TSCA section 3(5)) or processed (as defined in TSCA section 3(13)) for consumer paint or coating removal.''

(b) SDS Section 15: ''This chemical/product is not and cannot be distributed in commerce (as defined in TSCA section 3(5)) or processed (as defined in TSCA section 3(13)) for consumer paint or coating removal.''

§ 751.109 Recordkeeping.

(a) Each person who manufactures, processes, or distributes in commerce any methylene chloride after August 26, 2019 must retain in one location at the headquarters of the company, or at the facility for which the records were generated, documentation showing:

(1) The name, address, contact, and telephone number of companies to whom methylene chloride was shipped;

(2) A copy of the notification provided under § 751.107; and

(3) The amount of methylene chloride shipped.

(b) The documentation in paragraph (a) of this section must be retained for 3 years from the date of shipment.

Subpart C—[Reserved]

[FR Doc. 2019–05666 Filed 3–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 181210999–9239–02]

RIN 0648–BI66

Fisheries of the Northeastern United States; Framework Adjustment 30 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements the measures of Framework Adjustment 30 to the Atlantic Sea Scallop Fishery Management Plan that establish scallop specifications and other measures for fishing years 2019 and 2020. This action is necessary to respond to updated scientific information, and the intended effect of this rule is to prevent overfishing, improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource, and implement these measures for the 2019 fishing year.

DATES: Effective April 1, 2019.

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the measures in Framework Adjustment 30 and other considered alternatives and analyzes the impacts of the measures and alternatives. Copies of Framework 30, the EA, the Initial Regulatory Flexibility Analysis (IRFA), and information on the economic impacts of this rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-30-1.*

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/.*

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework 30 to the Atlantic Sea Scallop Fishery Management Plan (FMP) on December 5, 2018, and submitted a final EA to NMFS on March 7, 2019, for approval. NMFS published a proposed rule for Framework 30 on February 20, 2019 (84 FR 5035). To help ensure that the final rule would be implemented before April 1, 2019, the start of the fishing year, the proposed rule included a 15-day public comment period that closed on March 7, 2019.

NMFS has approved all of the measures in Framework 30 recommended by the Council, as described below. This final rule implements Framework 30, which establishes scallop specifications and other measures for fishing years 2019 and 2020, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2019, and default specifications for fishing year 2020. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2019 Fishing Year, and Default Specifications for Fishing Year 2020

The allocations incorporate updated biomass reference points that resulted from the Northeast Fisheries Science Center's most recent scallop stock benchmark assessment that was completed in August 2018. The assessment reviewed and updated the data and models used to assess the scallop stock and ultimately updated the reference points for status determinations. The scallop stock is considered overfished if the biomass is less than half of the biomass at maximum sustainable yield (B_{msy}), and overfishing is occurring if fishing mortality (F) is above the fishing mortality at maximum sustainable yield (F_{msy}). The assessment found that the scallop resource is not overfished and overfishing is not occurring, but the estimates for F_{msy} and B_{msy} have changed. A comparison of the old and new reference points is outlined in Table 1.

TABLE 1—SUMMARY OF OLD AND NEW SCALLOP REFERENCE POINTS FROM THE LAST TWO BENCHMARK SCALLOP STOCK ASSESSMENTS IN 2014 AND 2018

	2014 assessment	2018 assessment
F_{msy}	0.48	0.64
B_{msy}	96,480 mt	116,766 mt
1/2 B_{msy}	48,240 mt	58,383 mt

Due to these reference point updates, the fishing mortality rates that the Council uses to set OFL, ABC, and ACL are updated through this action. The OFL was set based on an F of 0.64, equivalent to the F threshold updated through the 2018 assessment. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.51, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 125.7 million lb (57,003 mt) for 2019 and 101.5 million lb (46,028 mt) for the 2020 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust its ABC recommendation for 2020 when the Council begins to develop the next framework adjustment in the summer of 2019.

Table 2 outlines the scallop fishery catch limits derived from the ABC values and the projected landings of the fleet.

TABLE 2—SCALLOP CATCH LIMITS (MT) FOR FISHING YEARS 2019 AND 2020 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

Catch limits	2019 (mt)	2020 (mt) [1]
Overfishing Limit	73,421	59,447
Acceptable Biological Catch/ACL (discards removed)	57,003	46,028
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	570	460
ACL for fishery	55,843	44,978
Limited Access ACL	52,772	42,504
LAGC Total ACL	3,071	2,474
LAGC IFQ ACL (5 percent of ACL)	2,792	2,249
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	279	225
Limited Access ACT	47,598	38,337
APL (after set-asides removed)	27,209	([1])
Limited Access Projected Landings (94.5 percent of APL)	25,713	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,497	1,122
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,360	1,020
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	136	102

[1] The catch limits for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2020 that will be based on the 2019 annual scallop surveys.
[2] As a precautionary measure, the 2020 IFQ annual allocations are set at 75 percent of the 2019 IFQ Annual Allocations.

This action deducts 1.25 million lb (567 mt) of scallops annually for 2019 and 2020 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million-lb (567-mt) allocation, NMFS has already allocated 103,418 lb (46,902 kg) to previously-funded multi-year projects as part of the 2018 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2019 RSA awards and will be selecting and announcing projects for funding in the near future.

This action also deducts 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 570 mt for 2019 and 460 mt for 2020. In fishing year 2019, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.12 DAS per DAS fished. For access area trips, the compensation rate is 250 lb (113 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 250 lb (113 kg) per trip when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2020 observer set-aside when it develops specific, non-default measures for 2020.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2019 and 2020 (Table 3). The 2019 DAS allocations are the same as those allocated to the limited access fleet in 2018. Framework 30 sets 2020 DAS allocations at 75 percent of fishing year 2019 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2020 specifications action is delayed past the start of the 2020 fishing year. The allocations in Table 3 exclude any DAS deductions that are required if, when calculating final landings for fishing year 2018, NMFS determines that the limited access scallop fleet exceeded its 2018 sub-ACL.

TABLE 3—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2019 AND 2020

Permit category	2019	2020 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2019 and the start of 2020, Framework 30 keeps the Mid-Atlantic Access Area (MAAA), Nantucket Lightship-West Access Area (NLS–W), and Closed Area 1 Access Area (CA1) open as access areas. In addition, this action closes the Nantucket Lightship-South Access Area (NLS–S). However, vessels are still able to fish fishing year 2018 allocation in NLS–S during the first 60 days of the 2019 fishing year.

Closed Area 1 Flex Allocation

Framework 30 allocates a new type of flexible allocation in CA1. Limited access full-time and part-time vessels will be allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg), respectively, of flexible allocation (flex allocation) in CA1 (Table 4 and Table 5). Because of uncertainty about the condition of the resource in CA1, scallops allocated to the limited access fleet in CA1 can be landed in any available access area. For the 2019 fishing year and the first 60 days of the 2020 fishing year, limited access vessels may choose to land CA1 flex allocation from any access area available in fishing year 2019 (*i.e.,* CA1, MAAA, and/or NLS–W). For example, a full-time vessel can take a trip in the CA1 and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the CA1 flex allocation available, which can be landed from CA1, MAAA, and/or NLS–W. Trips can be combined with allocation dedicated to other areas, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

Table 4 provides the limited access full-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the 18,000-lb (8,165-kg) possession limit on any one trip.

TABLE 4—SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2019 AND 2020

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg.)

*Closed Area 1 flex allocation can be landed in any available access area.

Table 5 provides the limited access part-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the 17,000-lb (7,711-kg) possession limit on any one trip.

TABLE 5—SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2019 AND 2020

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	0 lb (0 kg)
Nantucket Lightship West		17,000 lb (7,711 kg)	7,200 lb (3,266 kg)
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg)
Total		51,000 lb (23,133 kg)	14,400 lb (6,532 kg)

*Closed Area 1 flex allocation can be landed in any available access area.

For the 2019 fishing year, an occasional limited access vessel is allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit of 10,500 lb (4,763 kg) of scallops per trip. Occasional vessels can harvest 10,500 lb (4,763 kg) allocation from only one of three available access areas (CA1, NLS–W, or MAAA). For the 2020 fishing year, occasional limited access vessels are allocated 10,500 lb (4,763 kg) in the MAAA only with a trip possession limit of 10,500 lb (4,763 kg) per trip.

Limited Access Vessels' One-for-One Area Access Allocation Exchanges

The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated to another access area. These exchanges may only be made for the amount of the current trip possession limit (18,000 lb (8,165 kg) for full-time vessels and 17,000 lb (7,711 kg) for part-time vessels). In addition, these exchanges can only be made between vessels in the same permit category. For example, a full-time vessel may not exchange allocations with a part-time vessel, and vice versa.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action implements a 2,792-mt ACL for 2019 and a 2,249-mt default ACL for 2020 (see Table 2). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing year 2019 is 1,360 mt and 1,020 mt for 2020 (see Table 2). Each vessel's IFQ is calculated from these allocations based on APL.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action implements a 279-mt ACL for 2019 and a default 225-mt ACL for 2020 (see Table 2). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits for fishing year 2019 is 136 mt and 102 mt for 2020 (see Table 2). Each vessel's IFQ is calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 30 allocates LAGC IFQ vessels a fleet-wide number of trips in the CA1, NLS–W, and MAAA for fishing year 2019 and default fishing year 2020 trips in the MAAA (see Table 6). The scallop catch associated with the total number of trips for all areas combined (3,997) for fishing year 2019 is equivalent to the 5.5 percent of total catch from access areas.

TABLE 6—FISHING YEARS 2019 AND 2020 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2019	2020 [1]
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571
Total	3,997	1,142

[1] The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

4. Northern Gulf of Maine (NGOM) TAC. This action implements a 205,000-lb (92,986-kg) annual NGOM TAC for fishing year 2019 and a 170,000-lb (77,111-kg) default TAC for fishing year 2020. The NGOM portions of Framework 29 (83 FR 12857; March 26, 2018) developed a methodology for splitting the TAC between the LAGC and the limited access fleets. The limited access portion of the TAC may only be fished by vessels participating in the RSA program that are participating in a project that has been allocated NGOM RSA allocation. Table 7 describes the division of the TAC for the 2019 and 2020 (default) fishing years.

TABLE 7—NGOM TACS FOR FISHING YEAR 2019 AND 2020

Fleet	2019		2020 (default)	
	lb	kg	lb	kg
LAGC	137,500	62,369	120,000	54,431
Limited access	67,500	30,617	50,000	22,680
Total	205,000	92,986	170,000	77,111

5. Scallop Incidental Catch Target TAC. This action implements a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2019 and 2020 to account for mortality from vessels that catch scallops while fishing for other species, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from NLS–W, MAAA, and the open area. All vessels are prohibited from harvesting RSA compensation pounds in CA1. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project, as implemented in the NGOM portions of Framework 29. Finally, Framework 30 prohibits the harvest of RSA from any access areas under default 2020 measures. At the start of the 2020 fishing year, RSA compensation can only be harvested from open areas. The Council will likely re-evaluate this default prohibition measure in the action that will set final 2020 specifications.

Standardized Default Allocations

The Scallop FMP allocates fishery specifications on an annual basis including open-area DAS and access area trips for the limited access component, IFQ to qualifying LAGC IFQ vessels, and access area trips to the LAGC IFQ fleet. Default specifications have been developed in this annual process so that the fishery may continue to operate at a conservative level if updated specifications are not in place by April 1 (start of the fishing year). This action standardizes the process for developing some default measures.

Framework 30 standardizes the default DAS allocations for the limited access fleet. During the specifications setting process, each limited access permit type receives 75 percent of Fishing Year 1 open area DAS to begin the subsequent fishing year. In addition, this action standardizes the default LAGC IFQ allocation. The LAGC IFQ component receives 75 percent of Fishing Year 1 quota allocation. This action does not allocate default access area trips for the limited access or LAGC IFQ component, and it does not standardize default allocations to the NGOM.

Standardized Approach To Setting LAGC IFQ Access Area Trips

The LAGC IFQ fishery is allocated a fleetwide total number of access area trips. Individual vessels are not required to take trips in specific areas as is the case for access area trips allocated to the limited access fishery. Instead, a maximum number of trips are identified for each area and, once that limit is reached, the area closes to all LAGC IFQ vessels for the remainder of the fishing year. The level of allocation can vary and is specified in each framework action. Framework 30 standardizes overall access area allocations to the LAGC IFQ component by allocating the amount equivalent to 5.5 percent of total projected access area harvest by the limited access and LAGC IFQ components. The total projected access area harvest will be set by:

1. First, multiplying the number of full-time access area trips by the full-time limited access fleet's access area possession limit and the number of full-time equivalent permits in the fishery (327);

2. Next, dividing the expected limited access fleet's access area harvest by 0.945 to calculate total expected access area harvest; and

3. Finally, calculating the number of access area trips allocated to the LAGC IFQ fleet by dividing 5.5 percent of total expected access area harvest by the LAGC IFQ possession limit.

Regulatory Corrections Under Regional Administrator Authority

This final rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first

revisions, at § 648.52(g) and § 648.59(d), clarify that LAGC IFQ and limited access scallop vessels, respectively, cannot exceed the scallop possession limit unless they are carrying an observer. The second revision, at § 648.53(h)(4)(ii) and (iii), adjusts the specific timing for the LAGC IFQ Cost Recovery Program to more accurately reflect the realities and limitations of how the program has been operating. The current regulatory language states that NMFS shall mail out cost recovery bills on or about October 31 of each year, and that the fee must be paid by January 1 of each year. In practice, it is not possible for NMFS to prepare bills on or before October 31, because it does not provide enough time to collect any data from the last few weeks of the cost recovery year, run quality assurance and quality control checks on that data, determine total recoverable costs, and generate bills. We have determined that cost recovery can be accomplished more effectively and clearly by simply giving up to 60 days for the bill to be paid after it is mailed.

Comments and Responses

We did not receive any comments on the proposed rule.

Changes From the Proposed Rule

We corrected a typographical error at § 648.62(b)(1) that listed the LAGC portion of the 2020 NGOM TAC in kilograms as 5,443 kg (12,000 lb). The actual LAGC portion of the 2020 NGOM TAC is 54,431 kg (120,000 lb). The pounds listed in the proposed rule were correct.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

OMB has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner are necessary to achieve conservation objectives for the scallop fishery and certain fish stocks, and to relieve other restrictions on the scallop fleet. This constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final Framework 30 measures effective on April 1, 2019.

The 2019 fishing year begins on April 1, 2019. If Framework 30 is delayed beyond April 1, certain default measures, including access area designations, DAS, IFQ, RSA and observer set-aside allocations, would automatically be put into place. These default allocations were set more conservatively than what would eventually be implemented under Framework 30. Under default measures, each full-time vessel has 18 DAS and one access area trip for 18,000 lb (8,165 kg) in the Mid-Atlantic Access Area. We have good cause to waive the 30-day delay in effectiveness because this action provides full-time vessels with an additional 6 DAS (24 DAS total) and 108,000 lb (48,988 kg) in access area allocation (126,000 lb (57,153 kg) total). Further, LAGC IFQ vessels will receive an additional 447-mt (1,497-mt total) of allocation and 3,426 access area trips spread out across 3 access areas (3,997 trips total). Accordingly, this action prevents more restrictive aspects of the default measures from going into place. Framework 30 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time for this action to be forwarded to NMFS and implemented by April 1, 2019, the beginning of the scallop fishing year.

Further, following the lapse in appropriations, NMFS published the proposed rule as quickly as possible, allowing for only a 15-day comment period, after receiving a draft of Framework 30 from the Council, and NMFS published the final rule as quickly as possible after the close of the comment period. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that should be available. Therefore, the Assistant Administrator for Fisheries has waived the 30-day delay in the date of effectiveness requirement of 5 U.S.C. 553(d).

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 30. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 30 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 30 and in the preambles to the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy of the IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no specific comments on the IRFA.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These regulations affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. As explained in the proposed rule, the regulations are expected to result in slightly higher profits for small entities when compared to status quo. Framework 30 provides extensive information on the number and size of vessels and small businesses that will be affected by the regulations, by port and state (see **ADDRESSES**). Fishing year 2017 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 307 vessels that held full-time limited access permits in 2017, including 247 dredge, 50 small-dredge, and 10 scallop trawl permits. In the same year, there were also 31 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2017. NMFS issued 240 LAGC IFQ permits and 95 LAGC NGOM permits in 2017, of which, about 127 of the IFQ vessels and 32 NGOM vessels declared scallop trips in 2017. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.5 of Framework 30 provides extensive information on the number and size of vessels that will be affected by the regulations, their home and principal state, dependency on the scallop

fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, ownership entities are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement between the two owners for the additional vessels would be considered a separate ownership entity for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2017 permits. This analysis considers average gross sales associated with the permits in the current ownership dataset for calendar years 2015 through 2017 to provide a recent average. Matching the potentially impacted 2017 fishing year permits (limited access permits and LAGC IFQ permits) to calendar year 2017 ownership data results in 164 distinct ownership entities for the limited access fleet, and 101 distinct ownership entities for the LAGC IFQ fleet. Of these, based on the Small Business Administration guidelines, 157 of the limited access distinct ownership entities and 101 of the LAGC IFQ entities are categorized as small entities. The remaining seven of the limited access and none of the LAGC IFQ entities are categorized as large entities. There were 32 distinct small business entities with active NGOM permits in 2017.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of Framework 30, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, Framework 30 standardizes default specifications for limited access DAS and LAGC IFQ allocation and standardizes the approach used to set the number of access area trips available to for the LAGC. This reduces confusion for the fleet and allows them to better plan future scenarios. In addition, Framework 30 implements flexible allocation in CA1. This was intended to provide flexibility to the fleet by allowing them to fish this allocation in any available access. Alternatives to the measures in this final rule are described in detail in Framework 30, which includes an EA, RIR, and IRFA (see **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits must be derived using SSC-approved scientific calculations based on the Scallop FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing FMP, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide (*i.e.,* permit holder letter) will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 21, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

Subpart A—General Provisions

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14:

■ a. Remove and reserve paragraph (i)(2)(viii); and

■ b. Revise paragraphs (i)(4)(i)(C) and (i)(5)(iii).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(4) * * *

(i) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the LAGC share of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

(5) * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the **Federal Register** that the LAGC share of the NGOM scallop management area TAC has been

harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 3. In § 648.52, revise paragraph (g) to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the LAGC IFQ vessel possession limit is 600 lb (272.2 kg) and the additional allowance to defray the cost of an observer is 200 lb (90.7 kg), the vessel could retain up to 800 lb (362.9 kg) when carrying an observer, regardless of trip length. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation, and it may land it on a subsequent trip. However, the vessel may not exceed the IFQ trip possession limit as described in § 648.52(a) unless it is actively carrying an observer.

■ 4. Amend § 648.53 by:

■ a. Revising paragraphs (a)(6)(iii), (a)(8), and (b)(3);

■ b. Adding paragraph (b)(4); and

■ c. Revising paragraphs (c)(1) and (2) and (h)(4)(ii) and (iii).

The revisions and additions read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(6) * * *

(iii) *LAGC IFQ fleet annual allocation.* (A) The annual allocation for the LAGC IFQ fishery for vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit shall be equal to 5 percent of the APL. The annual allocation for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the APL.

(B) Standardized default LAGC IFQ allocation. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocation expires, the second-year default allocation, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation for all vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit and for vessels issued both an LAGC IFQ scallop permit and a limited access scallop permit. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

* * * * *

(8) The following catch limits will be effective for the 2019 and 2020 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2019 (mt)	2020 (mt) [1]
Overfishing Limit	73,421	59,447
Acceptable Biological Catch/ACL (discards removed)	57,003	46,028
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	570	460
ACL for fishery	55,843	44,978
Limited Access ACL	52,772	42,504
LAGC Total ACL	3,071	2,474
LAGC IFQ ACL (5 percent of ACL)	2,792	2,249
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	279	225
Limited Access ACT	47,598	38,337
APL (after set-asides removed)	27,209	([1])
Limited Access Projected Landings (94.5 percent of APL)	25,713	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,497	1,122
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,360	1,020
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	136	102

[1] The catch limits for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2020 that will be based on the 2019 annual scallop surveys. The 2020 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in (a)(6)(iii)(B) of this section, the 2020 IFQ annual allocations are set at 75 percent of the 2019 IFQ Annual Allocations.

* * * * *

(b) * * *

(3) The DAS allocations for limited access scallop vessels for fishing years 2019 and 2020 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2019	2020 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. The 2020 DAS allocations are set at 75 percent of the 2019 allocation as a precautionary measure.

(4) Standardized default DAS allocations. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocations expire, the second-year default limited access DAS allocations, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(c) * * *

(1) *Limited access AM exception.* If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.46, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.46 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.51.

(2) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL, defined in paragraph (a)(5) of this section, by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the number of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.46. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

* * * * *

(h) * * *

(4) * * *

(ii) *Fee payment procedure.* On or about October 31 of each year NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS within 60 days from the date of mailing of the recovery bill. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov,* or other internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment website and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS within 60 days from the date of mailing. If the cost recovery payment, as determined by NMFS, is not made within 60 days from the date of mailing, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and decide as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

■ 5. Amend § 648.59 by:

■ a. Revising paragraph (b)(3)(i)(B);

■ b. Adding paragraphs (b)(3)(ii)(A) and (B);

■ c. Revising paragraphs (c) through (e);

■ d. Adding paragraph (g)(3)(iv); and

■ e. Revising paragraphs (g)(3)(v) and (g)(4)(i).

The revisions and additions read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2019 and 2020 fishing years:

(*1*) *Full-time vessels*—(*i*) For a full-time limited access vessel, the possession limit and allocations are:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations.* For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(*2*) *Part-time vessels*— (*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	0 lb (0 kg).
Nantucket Lightship West		17,000 lb (7,711 kg)	7,200 lb (32,66 kg).
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Total		51,000 lb (23,133 kg)	14,400 lb (6,532 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations.* For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 17,000-lb (7,711-kg) possession limit is not exceeded on any one trip.

(*3*) *Occasional limited access vessels.* (*i*) For the 2019 fishing year only, an occasional limited access vessel is allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit at 10,500 lb of scallops per trip (4,763 kg per trip). Occasional limited access vessels may harvest the 10,500 lb (4,763 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, or Mid-Atlantic).

(*ii*) For the 2020 fishing year, occasional limited access vessels are allocated 3,000 lb (1,361 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 3,000 lb of scallops per trip (1,361 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges.* (A) The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B*) Flex allocation exchanges.* In fishing year 2019, full-time and part-time vessel are respectively allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg) of scallops that may be landed from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from any access area. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of Mid-Atlantic Access Area allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the any available access area and may only land this allocation from Mid-Atlantic Access Area, but Vessel B could land the flex allocation in any available access area.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in

§ 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2018, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2019 (April 1, 2019, through May 30, 2019).

(d) *Possession limit to defray the cost of observers.* The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in § 648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation or the vessel's allocation for the Scallop Rotational Area that was fished. The vessel may land the remainder of its allowance on a subsequent trip. However, the vessel may not exceed the IFQ or Scallop Rotational Area trip possession limit, as described in § 648.52(a) or § 648.59(b), respectively, unless it is actively carrying an observer.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2019 and 2020 are:

(1) 2019: Nantucket Lightship-West and Mid-Atlantic.

(2) 2020: No access areas.

* * * * *

(g) * * *

(3) * * *

(iv) *Allocation of Scallop Access Area Trips.* Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, the LAGC IFQ access area trip allocations, specified in paragraph (v) of this section, shall be set at 5.5 percent of the total expected access area harvest for each year.

(v) The following LAGC IFQ access area trip allocations will be effective for the 2019 and 2020 fishing years:

Scallop access area	2019	2020 [1]
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571
Total	3,997	1,142

[1] The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits*—(i)*Scallops.* (A) A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops.

(B) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a), unless otherwise authorized pursuant to paragraph (d) of this section.

* * * * *

■ 7. In § 648.62, revise paragraphs (b)(1) and (c) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(b) * * *

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2019 and 2020 fishing years are as follows:

Fleet	2019		2020 (default)	
	lb	kg	lb	kg
LAGC	137,500	62,369	120,000	54,431
Limited access	67,500	30,617	50,000	22,680
Total	205,000	92,986	170,000	77,111

* * * * *

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM or IFQ permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

[FR Doc. 2019–05748 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 59
Wednesday, March 27, 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 JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1292

[EOIR Docket No. 18–0301; RIN 1125–AA83]

Professional Conduct for Practitioners, Scope of Representation and Appearances

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Advance notice of proposed rulemaking with request for comment.

SUMMARY: The Department of Justice (Department) is evaluating the possibility of revising the rules and procedures governing representation and appearance during proceedings before the Executive Office for Immigration Review's (EOIR) immigration courts and Board of Immigration Appeals (BIA). The Department is considering whether to amend those rules to allow for, and identify the nature and scope of, authorized practitioners' limited representation of aliens before EOIR. The Department is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public suggestions for any such potential amendments to the relevant portions of EOIR's regulations.

DATES: The Department invites written or electronic comments from members of the public submitted on or before April 26, 2019. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight Eastern Time at the end of that day.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 18–0301 or RIN 1125–AA83, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18–0301 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of this ANPRM. EOIR also invites comments that relate to the economic, environmental, or federalism effects that might result from any regulatory changes related to these matters.

Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information of which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information of which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the agency counsel's contact information specific to this rule.

II. Background

The Immigration and Nationality Act (INA) provides that aliens appearing before an immigration judge and on appeal before the BIA ''shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.'' INA § 240(b)(4)(A) (8 U.S.C. 1229a(b)(4)(A)); *see also* INA § 292 (8 U.S.C. 1362). Attorneys in good standing and accredited representatives approved by EOIR are eligible to represent respondents in EOIR proceedings, as well as certain other persons as provided in 8 CFR 1292.1.

In order to represent an alien before EOIR, an attorney or representative must meet the regulatory requirements, including the filing of a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR–28) or a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR–27), as appropriate. *See* 8 CFR 1003.3(a)(3), 1003.17, 1003.38(g), and part 1292. Representation continues in the proceedings for which an attorney or representative enters an appearance before EOIR, whether it is front of the immigration court or the BIA. The representation continues until and unless the immigration judge or the BIA, whichever applies, grants an oral or written motion to withdraw or substitute. *See* 8 CFR 1003.17(b), 1003.38(g), 1292.4(a).[1]

[1] In 2003, the Attorney General redesignated the previous regulations in 8 CFR parts 3 and 292, relating to EOIR, as 8 CFR parts 1003 and 1292 in connection with the abolition of the former Immigration and Naturalization Service and the

Historically, EOIR did not permit limited appearances by attorneys and accredited representatives. That is, prior to a regulatory change published in 2015, an attorney or accredited representative who entered an appearance on behalf of a respondent for any purpose was deemed to be the person's representative for purposes of all of immigration court or BIA proceedings for which they entered an appearance, including bond proceedings and removal proceedings.

In 2015, the Department published a final rule to allow representatives ''to enter an appearance solely to custody and bond proceedings before the Immigration Court'' by amending 8 CFR 1003.17(a). 80 FR 59500 (Oct. 1, 2015). In response to a comment seeking a broadening of the limited scope of representation permitted, the Department noted that the regulations would still require ''a representative of record to represent an individual in all aspects of each separate type of proceeding, unless the immigration judge grants a motion to withdraw or substitute counsel.'' 80 FR 59501. Therefore, when an attorney or authorized representative enters an appearance before an immigration court, the appearance may be entered for representation in ''custody or bond proceedings only, any other proceedings only, or for all proceedings'' before an immigration judge. 8 CFR 1003.17(a).

In any case appealed to the BIA, the alien may also be represented by an attorney or representative. *See* 8 U.S.C. 1362. Representation before the BIA continues until and unless withdrawal or substitution of attorney or representative is permitted. *See* 8 CFR 1003.38(g), 1292.4(a).

In addition to the foregoing regulations dealing with appearances, the current EOIR regulations also include definitions pertaining to practice. *See* 8 CFR 1001.1(i) and (k):

(i) The term *practice* means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS, or any immigration judge, or the Board.

* * * * *

(k) The term *preparation,* constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.

The Department is now considering further revision to EOIR's regulations governing the rules of practice and the scope of appearance and representation in proceedings before the immigration courts and the BIA.

III. Request for Public Comments

Before proposing any specific regulatory text for public comment, the Department is seeking preliminary input from the public. In addition to soliciting suggestions and comments in responses to the specific questions raised in this ANPRM, the Department is particularly interested in hearing from all those who have a stake in providing, receiving, or coordinating representation in the immigration court system. The Department is interested in hearing all views related to the possibility of expanding procedures for the limited representation of aliens in proceedings before EOIR.

Question 1: Should the Department permit certain types of limited representation currently impermissible under regulations? If so, to what extent? If not, why not?

Question 2: Should limited representation be permitted to allow attorneys or representatives to appear at a single hearing in proceedings before EOIR, possibly leaving the respondent without representation for a subsequent hearing on the same filing? If so, to what extent? If not, why not?

Question 3: Should limited representation be permitted to allow attorneys or representatives to prepare or file a pleading, application, motion, brief, or other document without providing further representation in the case? If not, why not? If so, should attorneys or representatives be required to identify themselves as the author of the document or should anonymity (*i.e.,* ghostwriting) be permitted?

Question 4: If limited representation is permitted in proceedings before EOIR, should an attorney or representative be required to file a Notice of Entry of Appearance regardless of the scope of the limited representation? If so, should a form separate from the EOIR–27 and EOIR–28 be created for such appearances?

Question 5: If limited representation is permitted, should attorneys or representatives certify to EOIR, either through a form or filings made, that the alien has been informed about the limited scope of the representation?

Question 6: If limited representation is permitted in proceedings before EOIR, to what extent should such attorneys or representatives have access to the relevant record of proceedings?

Question 7: To what extent could different approaches for limited representation impair the adjudicative process or encourage abuse or other misconduct that adversely affects EOIR, the public, or aliens in proceedings, or lead to increased litigation regarding issues of ineffective assistance of counsel?

Question 8: What safeguards, if any, should be implemented to ensure the integrity of the process associated with limited representation in proceedings before EOIR, and to prevent any potential abuse and fraud?

Question 9: What kinds of constraints or legal concerns with respect to limited representation may arise under state rules of ethics or professional conduct for attorneys who are members of the bar in the various states?

Question 10: Should EOIR provide that practitioners, as a condition of representing aliens in a limited manner, be required to agree to limit their fees in charging for their services?

Question 11: The Department is interested in gathering other information or data relating to the issue of expanding limited appearances in EOIR proceedings. Are there any additional issues or information not addressed by the Department's questions that are important for the Department to consider? Please provide as much detail as possible in your response.

Comments that will provide the most assistance to EOIR will reference a specific regulatory section, provide draft regulatory language, explain the reasons for the recommended amendment, and include data, information, or authority that support the recommended amendment.

IV. Statutory and Executive Order Review

This ANPRM has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,''

transfer of its responsibilities to the Department of Homeland Security. 68 FR 9824 (Feb. 28, 2003). Under the Homeland Security Act, EOIR (including the BIA and the immigration courts) remains under the authority of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). 8 CFR 1292.4(a) (previously 8 CFR 292.4(a)) provides that withdrawal/substitution of counsel before the BIA is permitted in accordance with 8 CFR 1003.36 (previously 8 CFR 3.36). However, 8 CFR 3.36 (later 8 CFR 1003.36) was redesignated as 8 CFR 3.38 (later 8 CFR 1003.38) in April 1992. *See* 57 FR 11568, 11570 (Apr. 6, 1992). Thus, the correct reference in 8 CFR 1292.4(a) should be to 8 CFR 1003.38(g). Further, the reference to 1003.16 should be understood as a reference to 1003.17.

section 1(b), General Principles of Regulation, and in accordance with Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' The Department has determined that this ANPRM is a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this ANPRM has been reviewed by the Office of Management and Budget. Pursuant to guidance issued by OMB, the requirements of E.O. 13771 do not apply to this ANPRM.

This action does not propose or impose any requirements. The ANPRM is being published to seek information from the public regarding the possibility of revising the rules and procedures governing representation and appearance during proceedings before EOIR's immigration courts and the BIA. The requirements of the Regulatory Flexibility Act (RFA) do not apply to this action because, at this stage, it is an ANPRM and not a ''rule'' as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, if EOIR decides to proceed with a notice of proposed rulemaking regarding this matter, EOIR will conduct all relevant analyses as required by statute or Executive Order.

Dated: March 5, 2019.

James R. McHenry,

Director.

[FR Doc. 2019–05838 Filed 3–26–19; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 71, 76, 77, 78, 86, 93, and 161

[Docket No. APHIS–2011–0044]

RIN 0579–AD65

Brucellosis and Bovine Tuberculosis; Update of General Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; partial withdrawal.

SUMMARY: We are announcing a partial withdrawal of a proposed rule published in the **Federal Register** on December 16, 2015, that, if finalized, would have consolidated the regulations governing bovine tuberculosis and those governing brucellosis. Specifically, we are withdrawing those portions of the proposed rule that would have affected the provisions governing our domestic brucellosis and tuberculosis programs. We are taking this action after considering the comments we received following the publication of the proposed rule.

DATES: As of March 27, 2019, the proposed amendments to 9 CFR parts 50, 51, 71, 76, 77, 78, 86, and 161 that were contained in the proposed rule published December 16, 2015 (80 FR 78462) are withdrawn.

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Cattle Health Center, Strategy and Policy VS, APHIS, 2150 Centre Avenue, Building B–3E20, Fort Collins, CO 80526–8117; (970) 494–7378.

SUPPLEMENTARY INFORMATION: On December 16, 2015, we published in the **Federal Register** (80 FR 78462–78520, Docket No. APHIS–2011–0044) a proposed rule [1] to amend the regulations in 9 CFR parts 50, 51, 71, 76, 77, 78, 86, 93, and 161 to consolidate the regulations governing bovine tuberculosis, and those governing brucellosis. The proposed rule would have affected both domestic and import regulations for the two diseases.

We solicited comments concerning our proposal for 90 days ending on March 15, 2016. We extended the deadline for comments until May 16, 2016, in a document published in the **Federal Register** on March 11, 2016 (81 FR 12832–12833, Docket No. APHIS–2011–0044,). We received a total of 164 comments by that date. They were from captive cervid producers and captive cervid breeders' associations, cattle industry groups, State agriculture departments, State game and fish departments, veterinarians, representatives of foreign governments, and private citizens. The commenters raised a number of comments and concerns about the proposed rule.

The commenters were especially concerned with the proposal to combine the bovine tuberculosis and brucellosis domestic programs into a single program for cattle, bison, and captive cervids. The commenters pointed to differing disease epidemiology, source populations, modes of transmission, surveillance streams, movement controls, testing, and management practices.

Commenters were also concerned by our proposal to require States to submit animal health plans that detail cattle, bison, and captive cervid demographics in the State, information regarding sources of bovine tuberculosis or brucellosis in the State, surveillance and mitigations in the State, and personnel available to enforce the plan. The commenters expressed concern that the States may lack personnel, resources, and funding to implement and maintain Animal Health Plans, based on the proposed requirements.

Commenters expressed concern about our proposal to base State statuses on whether a State has implemented and is maintaining an Animal Health Plan instead of prevalence rates, saying that it seemed to be a move away from disease eradication and international standards, and pointing out that it would require foreign trading partners to re-evaluate their requirements for importing U.S. cattle.

We proposed that, if an area had a known source of tuberculosis and brucellosis that presents a risk, that area could not be accredited or reaccredited. We further proposed to require whole herd tests and individual animal tests for captive cervids as a condition of interstate movement, unless they come from accredited herds for brucellosis. Many captive cervid producers expressed concern that if these changes were adopted, they would lose their current accreditation. Several commenters questioned the need for a national requirement for what they consider a regional problem. Elk breeders expressed concern about the cost of this requirement, and stated that our economic analysis underestimated testing costs.

We proposed that exhibited, rodeo, and event cattle and bison would have to be tested 60 days prior to initial interstate movement, then at 180 day intervals after initial interstate movement, with limited exceptions. Many State animal health officials and several industry groups objected to considering exhibited cattle and bison equivalent to rodeo and event cattle and bison in terms of disease risk. They stated that exhibited cattle and bison are, in their experience, a very low risk for bovine tuberculosis and brucellosis, and these requirements could adversely impact regional fairs and exhibitions.

Finally, wildlife and animal health authorities expressed significant concern about our proposal that, if a State has known wildlife sources of bovine tuberculosis or brucellosis that pose a risk of transmission to program animals, the State would have to conduct surveillance of these source populations in a manner sufficient to detect brucellosis or tuberculosis in an animal within the source population. Several animal health officials stated that wildlife authorities in some States

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0044.*

are not authorized to conduct testing for bovine tuberculosis or brucellosis. Others stated they could not compel them to do so. Several wildlife authorities stated that the surveillance goal was too stringent, and should be set at a level sufficient to gauge prevalence, rather than detect an infected animal. Both animal health and wildlife authorities stated that the Animal and Plant Health Inspection Service would need to fund this testing in order for it to be conducted.

After considering all the comments we received, we have concluded that it is necessary to reexamine the proposed changes to the domestic bovine tuberculosis and brucellosis programs. Therefore, we are withdrawing the proposed amendments to parts 50, 51, 71, 76, 77, 78, 86, and 161 in our December 16, 2015, proposed rule referenced above. At this time we intend to continue considering the proposed amendments to part 93 that govern the importation of cattle with respect to bovine tuberculosis and brucellosis as we proposed in the December 16, 2015, proposed rule. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding the domestic bovine tuberculosis and brucellosis programs are developed.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of March 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–05851 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0013]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend and update its list of recurring safety zone regulations that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This proposed action is necessary to update the current list of recurring safety zones with revisions, additional events and removal of events that no longer take place. This regulation would restrict vessel traffic from the safety zones during the events unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 11, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0013 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Ohio Valley (COTP) proposes to amend 33 CFR 165.801, Table 1 titled ''Sector Ohio Valley Annual and Recurring Safety Zones'', to update our regulations for annual fireworks displays and other recurring events in the Eighth Coast Guard District.

The Table contains a list of annual and recurring safety zones in the Sector Ohio Valley as of May 11, 2018.

These events include air shows, fireworks displays, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes. The current list in 33 CFR 165.801, Table 1, requires amendment to provide new information on existing safety zones, to include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer needed. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of the upcoming recurring safety zone regulations. Event sponsors desiring to hold an event not listed in the table for the Sector Ohio Valley area of responsibility may seek permission for a regulated area for their event through a request to the phone number or email listed in the above **FOR FURTHER INFORMATION CONTACT** section.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments accordingly, whether through response, additional revision to the regulation, or otherwise.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for ''good cause found and published with the rule.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impractical to provide a 30-day comment period. These proposed regulated areas are necessary to ensure the safety of vessels and persons during the marine events. It is impracticable to publish an NPRM with a 30-day comment period because some of these updates must be established as early as the end of April 2019. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also update the regulated areas soon enough that the length of the notice and comment period does not compromise public safety.

III. Discussion of the Proposed Rule

Part 165 of 33 CFR contains regulations establishing regulated navigation areas and limited access areas to restrict vessel traffic for the safety of persons and property. Section 165.801, Table 1, establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards presented during certain events taking place in Sector Ohio Valley's AOR. From time to time, this section requires amendment to properly reflect the recurring safety zones in the AOR. This

proposed rule amends and updates § 165.801, Table 1 as described below.

This proposed rule adds 8 new recurring safety zones, removes 6 recurring events, and amends the dates and regulated areas for 9 recurring safety zones already listed in Section 165.801, Table 1, as follows:

This proposed rule would add the following 8 safety zones to Table 1 of Part 165.801:

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
Weekend before the 4th of July	Kentucky Dam Marina/Kentucky Dam Marina Fireworks.	Gilbertsville, KY	350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker (MM) 23 (Kentucky).
1 day—One weekend in September.	Boomtown Days—Fireworks	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
1 day—Second or Third week of June.	TriState Pottery Festival Fireworks.	East Liverpool, OH	Ohio River, Miles 42.5–45.0 (Ohio).
1 day—Friday before Thanksgiving.	Monongahela Holiday Show	Monongahela, PA	Ohio River, Miles 31.5–32.5 (Pennsylvania).
1 day—First two weeks in October.	Yeatman's Fireworks	Cincinnati, OH	Ohio River, Miles 469.0–470.5 (Ohio).
1 day—Last week in June or First week in July.	Rising Sun Fireworks	Rising Sun, IN	Ohio River, Miles 506.0–507.0 (Indiana).
3 days—One weekend in May	U.S. Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Miles 48.5–52 (Tennessee).
1 Day—One weekend in July	Three Rivers Regatta	Knoxville, TN	Tennessee River, Miles 642–653 (Tennessee).

This proposed rule would remove the following 6 safety zones from Table 1 of Part 165.801:

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7–327.7.
1 day—Second weekend in June.	City of St. Albans/St. Albans Town Fair.	St. Albans, WV	Kanawha River, Mile 46.3–47.3.
2 days—One weekend in August.	Powerboat Nationals—Parkersburg Regatta/Parkersburg.	Parkersburg, WV	Ohio River, Miles 183.5–185.5.
1 day—4th or 5th of July	City of Cape Girardeau July 4th Fireworks Show on the River.	Cape Girardeau, MO	Upper Mississippi River, Mile 50.0–52.0.
1 day—A Saturday in July	Paducah Parks and Recreation Department/Cross River Swim.	Paducah, KY	Ohio River, Mile 934.0–936.0.
1 day—Third or fourth of July	Harrah's Casino/Metropolis Fireworks.	Metropolis, IL	Ohio River, Mile 942.0–945.0.

The Coast Guard also proposes to revise regulations in 33 CFR 165.801, Table 1, by amending 9 currently-listed safety zones. The amendments would involve changes to marine event dates and/or regulated areas, with reference by line number to the current table. The 9 safety zones being amended are listed below:

Line	Date	Sponsor/name	Sector Ohio Valley location	Safety zone	Revision (date/area)
3	2 days—Second or third weekend in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Miles 597.0–607.0 (Kentucky).	area/date.
6	1 day—1st or 2nd week of August	Bellaire All-American Days	Bellaire, OH	Ohio River, MMs 93.5–94.5 (Ohio)	date.
7	2 days—a weekend in June	Rice's Landing Riverfest	Rice's Landing, PA.	Monongahela River, MMs 68.0–68.8 (Pennsylvania).	date.
9	1 day—one weekend before Labor Day.	Riverfest/Riverfest Inc.	Nitro, WV	Kanawha River, MMs 43.1–44.2 (West Virginia)..	date.
28	1 day—First week or weekend in July.	Summer Motions Inc./Summer Motion.	Ashland, KY	Ohio River, MMs 322.1–323.1 (Kentucky)..	date.
31	1 day—First week or weekend in July.	Portsmouth River Days	Portsmouth, OH	Ohio River, MMs 355.5–357.0 (Ohio)..	area.
33	1 day—in the month of August	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, MMs 0.0–0.5 (Pennsylvania).	date.
49	3rd or 4th of July	City of Hickman, KY/Town of Hickman Fireworks.	Hickman, KY	700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at MM 921.5 on the Lower Mississippi River (Kentucky).	area.

Line	Date	Sponsor/name	Sector Ohio Valley location	Safety zone	Revision (date/area)
58	3 days—second or third week of September.	Wheeling Heritage Port Sternwheel Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV ...	Ohio River, MMs 90.2–90.7 (West Virginia).	date.

The effect of this proposed rule would be to restrict general navigation in the safety zones during these events. Vessels intending to transit the designated waterway through the safety zones will only be allowed to transit the area when COTP, or a designated representative, has deemed it safe to do so or at the completion of the events. The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters during the events.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zones. These safety zones are limited in size and duration, and are usually positioned away from high vessel traffic areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones, and the rule would allow vessels to seek permission to enter the zones. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit these safety zones may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01 as it involves the revision of the table that informs the public of safety zones occurring in the Sector Ohio Valley AOR. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER**

INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034; 46 U.S.C. 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.801, Table 1 to read as follows:

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1. 2 days—Second or third weekend in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Miles 597.0–607.0 (Kentucky).
2. 3 days—Third or Fourth weekend in April.	Henderson Breakfast Lions Club Tri-Fest.	Henderson, KY	Ohio River, Miles 802.5–805.5 (Kentucky).
3. Multiple days—April through November.	Pittsburgh Pirates Season Fireworks.	Pittsburgh, PA	Allegheny River, Miles 0.2–0.9 (Pennsylvania).
4. Multiple days—April through November.	Cincinnati Reds Season Fireworks.	Cincinnati, OH	Ohio River, Miles 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
5. Multiple days—April through November.	Pittsburgh Riverhounds Season Fireworks.	Pittsburgh, PA	Monongahela River, Miles 0.22–0.77 (Pennsylvania).
6. 1 day—First week in May	Belterra Park Gaming Fireworks	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
7. 3 days—One weekend in May.	US Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Miles 48.5–52 (Tennessee).
8. 1 day—Saturday before Memorial Day.	Venture Outdoors Festival	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25; Monongahela River, Miles 0.0–0.25 (Pennsylvania).
9. 1 day—First weekend in June.	Cumberland River Compact/Nashville Splash Bash.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
10. 1 day—First or second week of August.	Bellaire All-American Days	Bellaire, OH	Ohio River, Miles 93.5–94.5 (Ohio).
11. 2 days—A weekend in June	Rice's Landing Riverfest	Rice's Landing, PA	Monongahela River, Miles 68.0–68.8 (Pennsylvania).
12. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 468.6–471.0 (Kentucky and Ohio).
13. 1 day—Second or third Saturday in June, the last day of the Riverbend Festival.	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
14. 1 day—Second or Third week of June.	TriState Pottery Festival Fireworks.	East Liverpool, OH	Ohio River, Miles 42.5–45.0 (Ohio).
15. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
16. 1 day—One weekend in June.	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Miles 59.5–60.5 (West Virginia).
17. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival.	Louisville, KY	Ohio River, Miles 617.5–620.5 (Kentucky).
18. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Miles 265.2–266.2, Kanawha River Miles 0.0–0.5 (West Virginia).
19. 1 day—Last weekend in June or first weekend in July.	City of Aurora/Aurora Firecracker Festival.	Aurora, IN	Ohio River, Mile 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
20. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Miles 25.2–25.6 (Pennsylvania).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
21. 1 day—Last weekend in June or first week in July.	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
22. 1 day—Last week in June or first week of July.	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Miles 777.3–778.3 (Indiana).
23. 1 day—Last week in June or First week in July.	Rising Sun Fireworks	Rising Sun, IN	Ohio River, Miles 506.0–507.0 (Indiana).
24. 1 day—Weekend before the 4th of July.	Kentucky Dam Marine/Kentucky Dam Marina Fireworks.	Gilbertsville, KY	350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker 23 (Kentucky).
25. 1 day—Saturday before July 4th.	Town of Cumberland City/Lighting up the Cumberlands.	Cumberland City, TN	Cumberland River, Miles 103.0–105.5 (Tennessee).
26. 1 day—July 3rd	Chattanooga Presents/Pops on the River.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
27. 1 day—July 3rd	Randy Boyd/Independence Celebration Fireworks Display.	Knoxville, TN	Tennessee River, Miles 625.0–628.0 (Tennessee).
28. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Miles 934.0–936.0; Tennessee River, Miles 0.0–1.0 (Kentucky).
29. 1 day—3rd or 4th of July	City of Hickman, KY/Town Of Hickman Fireworks.	Hickman, KY	700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at mile marker 921.5 on the Lower Mississippi River (Kentucky).
30. 1 day—July 4th	City of Knoxville/Knoxville Festival on the 4th.	Knoxville, TN	Tennessee River, Miles 646.3–648.7 (Tennessee).
31. 1 day—July 4th	Nashville NCVC/Independence Celebration.	Nashville, TN	Cumberland River, Miles 189.7–192.3 (Tennessee).
32. 1 day—July 4th	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Miles 254.5–257.4 (Alabama).
33. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Mils e 032.0–033.0 (Pennsylvania).
34. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
35. 1 day—July 4th	Wellsburg 4th of July Committee/Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Miles 73.5–74.5 (West Virginia).
36. 1 day—week of July 4th	Wheeling Symphony fireworks	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
37. 1 day—First week or weekend in July.	Summer Motions Inc./Summer Motion.	Ashland, KY	Ohio River, Miles 322.1–323.1 (Kentucky).
38. 1 day—week of July 4th	Chester Fireworks	Chester, WV	Ohio River mile 42.0–44.0 (West Virginia).
39. 1 day—First week of July	Cincinnati Symphony Orchestra	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
40. 1 day—First weekend or week in July.	Queen's Landing Fireworks	Greenup, KY	Ohio River, Miles 339.3–340.3 (West Virginia).
41. 1 day—First week or weekend in July.	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Miles 269.5–270.5 (Ohio).
42. 1 day—First week or weekend in July.	Kindred Communications/Dawg Dazzle.	Huntington, WV	Ohio River, Miles 307.8–308.8 (West Virginia).
43. 1 day—First week or weekend in July.	Greenup City	Greenup, KY	Ohio River, Miles 335.2–336.2 (Kentucky).
44.1 day— First week or weekend in July.	Middleport Community Association.	Middleport, OH	Ohio River, Miles 251.5–252.5 (Ohio).
45. 1 day—First week or weekend in July.	People for the Point Party in the Park.	South Point, OH	Ohio River, Miles 317–318 (Ohio).
46. 1 day—One of the first two weekends in July.	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).
47. 1 day—Week of July 4th	EQT 4th of July Celebration	Pittsburgh, PA	Ohio River, Miles 0.0–0.5, Allegheny River, Miles 0.0–0.5, and Monongahela River, Miles 0.0–0.5 (Pennsylvania).
48. 1 day—First week or weekend in July.	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Miles 58.1–59.1 (West Virginia).
49. 1 day—First week or weekend in July.	Portsmouth River Days	Portsmouth, OH	Ohio River, Miles 355.5–357.0 (Ohio).
50. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
51. 1 day—During the first week of July.	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
52. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Miles 754.0–760.0 (Kentucky).
53. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Miles 606.5–609.6 (Indiana).
54. 1 day—Saturday before July 4th, or Saturday after July 4th.	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee).
55. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Miles 408–409 (Kentucky).
56. 1 day—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Miles 554.0–561.0 (Indiana).
57. 1 day—Third Saturday in July.	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Miles 7.0–9.0 (Pennsylvania).
58. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Miles 90.0–90.5 (West Virginia).
59. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Miles 12.0–12.5 (Pennsylvania).
60. 2 days—One weekend in July.	Marietta Riverfront Roar Fireworks.	Marietta, OH	Ohio River, Miles 171.6–172.6 (Ohio).
61. 1 Day—One weekend in July.	Three Rivers Regatta	Knoxville, TN	Tennessee River, Miles 642–653 (Tennessee).
62. 1 day—First week of August	Kittaning Folk Festival	Kittanning, PA	Allegheny River, Miles 44.0–46.0 (Pennsylvania).
63. 1 day—First week in August	Gliers Goetta Fest LLC	Newport, KY	Ohio River, Miles 469.0–471.0.
64. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Miles 0.8–1.0 (Pennsylvania).
65. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Miles 005.5–006.0 (Pennsylvania).
66. 1 day—In the Month of August.	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
67. 1 day—Third week of August.	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Miles 25.2–25.8 (Pennsylvania).
68. 1 day—One weekend in August.	Parkersburg Homecoming Festival-Fireworks.	Parkersburg, WV	Ohio River, Miles 183.5–185.5 (West Virginia).
69. 1 day—One weekend in August.	Ravenswood River Festival	Ravenswood, WV	Ohio River, Miles 220–221 (West Virginia).
70. 1 day—last 2 weekends in August/first week of September.	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Miles 90.4–91.5 (West Virginia).
71. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25, Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1. (Pennsylvania).
72. 1 day—one weekend before Labor Day.	Riverfest/Riverfest Inc	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
73. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Miles 469.2–470.5 (Kentucky and Ohio) and Licking River, Miles 0.0–3.0 (Kentucky).
74. 1 day—Labor Day or first week of September.	Labor Day Fireworks Show	Marmet, WV	Kanawha River, Miles 67.5–68 (West Virginia).
75. 1 day—Second weekend in September.	Nashville Symphony/Concert Fireworks.	Nashville, TN	Cumberland River, Miles 190.1–192.3 (Tennessee).
76. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest.	Clarksville, TN	Cumberland River, Miles 124.5–127.0 (Tennessee).
77. 3 days— Second or third week in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Miles 90.2–90.7 (West Virginia).
78. 1 day—One weekend in September.	Boomtown Days—Fireworks	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
79. 1 day—One weekend in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Miles 171.5–172.5 (Ohio).
80. 1 day—One weekend in September.	Tribute to the River	Point Pleasant, WV	Ohio River, Miles 264.6–265.6 (West Virginia).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
81. Multiple days—September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1, Allegheny River, Miles 0.0–0.25 (Pennsylvania).
82. 1 day— First week in October.	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Miles 0.0–0.4 (Pennsylvania).
83. 1 day—Second weekend of October.	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
84. 1 day—First two weeks in October.	Yeatman's Fireworks	Cincinnati, OH	Ohio River, Miles 469.0–470.5 (Ohio).
85. 1 day—Second or third weekend in October.	Outdoor Chattanooga/Swim the Suck.	Chattanooga, TN	Tennessee River, Miles 452.0–454.5 (Tennessee).
86. 1 day—Fourth weekend in October.	Chattajack	Chattanooga, TN	Tennessee River, Miles 462.7–465.5 (Tennessee).
87. 1 day—One weekend in October.	West Virginia Motor Car Festival.	Charleston, WV	Kanawha River, Miles 58–59 (West Virginia).
88. 1 day—Friday before Thanksgiving.	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Miles 0.0–1.0 (Pennsylvania).
89. 1 day—Friday before Thanksgiving.	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Miles 44.5–45.5 (Pennsylvania).
90. 1 day—Friday before Thanksgiving.	Duquesne Light/Santa Spectacular.	Pittsburgh, PA	Monongahela River, Miles 0.00–0.22, Allegheny River, Miles 0.00–0.25, and Ohio River, Miles 0.0–0.3 (Pennsylvania).
91. 1 day—Friday before Thanksgiving.	Monongahela Holiday Show	Monongahela, PA	Ohio River, Miles 31.5–32.5 (Pennsylvania).
92. 1 day—Friday or Saturday after Thanksgiving.	Friends of the Festival/Cheer at the Pier.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
93. 1 day—Third week of November.	Gallipolis in Lights	Gallipolis, OH	Ohio River, Miles 269.2–270 (Ohio).
94. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River, Miles 0.5–1.0 (Pennsylvania).
95. 7 days—Scheduled home games.	University of Tennessee/UT Football Fireworks.	Knoxville, TN	Tennessee River, Miles 645.6–648.3 (Tennessee).

Dated: March 21, 2019

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–05849 Filed 3–26–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0761; FRL–9991–30–Region 9]

Air Plan Approval; Arizona; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Arizona's Regional Haze Progress Report (''Progress Report'' or ''Report''), submitted by the State of Arizona on November 12, 2015, as a revision to its state implementation plan (SIP). Arizona submitted its Progress Report and a negative declaration stating that further revision of the existing regional haze implementation plan is not needed at this time. The Progress Report addresses the federal Regional Haze Rule requirements under the Clean Air Act (CAA) to submit a report describing progress in achieving reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing implementation plan addressing regional haze. Arizona's Progress Report notes that Arizona has implemented the measures in the regional haze implementation plan due to be in place by the date of the Progress Report and that visibility in Class I areas affected by emissions from Arizona is improving. The EPA is proposing approval of Arizona's determination that the State's regional haze implementation plan is adequate to meet RPGs in Class I areas affected by emissions from Arizona for the first implementation period, which extended through 2018, and requires no substantive revision at this time.

DATES: Comments must be received on or before April 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0761 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Panah Stauffer, EPA Region IX, (415) 972–3247, *stauffer.panah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background

A. Description of Regional Haze

Fine particles impair visibility by scattering and absorbing light, thereby reducing the clarity, color, and visible distance that one can see. Regional haze is visibility impairment produced by emissions of fine particles by numerous sources and activities located across a broad geographic area. These fine particles can also cause serious health effects and mortality in humans and contribute to environmental impacts, such as acid deposition and eutrophication of water bodies.

B. History of Regional Haze Rule

In section 169A(a)(1) of the CAA Amendments of 1977, Congress created a program to protect visibility in designated national parks and wilderness areas, establishing as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' In accordance with section 169A of the CAA and after consulting with the Department of the Interior, the EPA promulgated a list of 156 mandatory Class I federal areas where visibility is identified as an important value.[1] In this notice, we refer to mandatory Class I federal areas on this list as ''Class I areas.''

With the CAA Amendments of 1990, Congress added section 169B to address regional haze issues. The EPA promulgated the Regional Haze Rule (RHR) on July 1, 1999.[2] In the RHR, the EPA revised the existing visibility regulations to integrate provisions addressing regional haze impairment and to establish a comprehensive visibility protection program for Class I areas. As defined in the RHR, the RPGs must provide for an improvement in visibility for the most impaired days (''worst days'') over the period of the implementation plan and ensure no degradation in visibility for the least impaired days (''best days'') over the same period.[3] The first regional haze implementation plan generally covers the period from 2000–2018 (also known as the first planning period).

Five years after submittal of the initial regional haze plan, states were required to submit progress reports that evaluate progress towards the RPGs for each Class I area within the state and in each Class I area outside the state that may be affected by emissions from within the state.[4] States were also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze plan.[5]

C. Arizona's Regional Haze Plan

Arizona submitted its initial regional haze SIP under 40 CFR 51.308 to the EPA on February 28, 2011 (hereinafter ''2011 Submittal'').[6] The EPA actions in Table 1 followed the 2011 Submittal.

TABLE 1—ARIZONA REGIONAL HAZE—SUMMARY OF EPA ACTIONS UNDER CAA SECTION 308

Date	EPA action
December 5, 2012	''Phase 1'' partial approval and partial disapproval of certain provisions of the 2011 Submittal and promulgation of partial federal implementation plan (FIP).[a]
July 30, 2013	''Phase 2'' partial approval and partial disapproval of remaining portions of Arizona Regional Haze 2011 Submittal.[b]
September 3, 2014	''Phase 3'' promulgation of FIP for remaining portions of Arizona Regional Haze program.[c]
April 10, 2015	Approval of SIP revision for the Arizona Electric Power Cooperative (AEPCO) Apache Generating Station.[d]
April 17, 2015	FIP revision replacing the control technology demonstration requirements for nitrogen oxides (NO_X) at Lhoist North America of Arizona, Inc. Nelson Lime Plant with revised recordkeeping and reporting requirements.[e]
April 13, 2016	FIP revision revising NO_X requirements for the Salt River Project Agricultural Improvement and Power District (SRP) Coronado Generating Station.[f]
November 21, 2016	FIP revision replacing the control technology demonstration requirements for NO_X at CalPortland Cement (CPC) Rillito Plant Kiln 4 and Phoenix Cement Company (PCC) Clarkdale Plant Kiln 4 with revised recordkeeping and reporting requirements.[g]
March 27, 2017	Approval of SIP revision to replace FIP for Arizona Public Service (APS) Cholla Generating Station.[h]
October 10, 2017	Approval of SIP revision to replace FIP for the SRP Coronado Generating Station.[i]

[a] 77 FR 72511 (December 5, 2012).
[b] 78 FR 461421 (July 30, 2013).
[c] 79 FR 52419 (September 3, 2014).
[d] 80 FR 19220 (April 10, 2015).
[e] 80 FR 21176 (April 17, 2015).
[f] 81 FR 21735 (April 13, 2016).
[g] 81 FR 83144 (November 21, 2016).
[h] 82 FR 15139 (March 27, 2017).
[i] 82 FR 46903 (October 10, 2017).

[1] The Class I areas are listed at 40 CFR part 81, subpart D. Areas designated as Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)).

[2] 64 FR 35714 (July 1, 1999). The rule was subsequently revised on July 6, 2005 (70 FR 39103), October 13, 2006 (71 FR 60611), and January 10, 2017 (82 FR 3078).

[3] 40 CFR 51.308(d)(1).

[4] 40 CFR 51.308(g).

[5] 40 CFR 51.308(h).

[6] On December 23, 2003, the Arizona Department of Environmental Quality (ADEQ) submitted a Regional Haze plan under 40 CFR 51.309 (''309 Plan''). Letter dated December 23, 2003, from Stephen A. Owens, Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA, Region IX. On December 30, 2004, ADEQ submitted a revision to its 309 Plan, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes. Letter dated December 30, 2004, from Stephen A. Owens, Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA. On December 24, 2008, ADEQ sent a letter resubmitting the 309 Plan revisions to the EPA. Letter dated December 24, 2008, from Stephen A. Owens, Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA. On May 16, 2006 (71 FR 28270) and May 8, 2007 (72 FR 25973), the EPA approved the smoke management rules that were part of these submittals. On August 8, 2013 (78 FR 48326), the EPA disapproved the remainder of the State's submittals under 40 CFR 309. Therefore, these prior submittals are not relevant for purposes of the Progress Report, unless otherwise noted.

On November 12, 2015, the State of Arizona submitted its Progress Report to meet the requirements of 40 CFR 51.308(g) and (h).[7] In accordance with these requirements, the Progress Report describes the status of implementation of measures included in the regional haze implementation plan, emissions reductions from these measures, and improvements in visibility conditions at the State's Class I areas. The Progress Report also includes a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1).

II. Context for Understanding Arizona's Progress Report

To facilitate a better understanding of Arizona's Progress Report as well as the EPA's evaluation of it, this section provides background on the regional haze program in Arizona.

A. Framework for Measuring Progress

The EPA has established a metric for determining visibility conditions at Class I areas referred to as the ''deciview index,'' which is measured in deciviews, as defined in 40 CFR 51.301. A deciview expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions (*i.e.,* pristine (low deciview) to extremely hazy (high deciview)). Deciviews are determined by using air quality data collected from the Interagency Monitoring of Protected Visual Environments (IMPROVE) network monitors to estimate light extinction, and then transforming the value of light extinction using a logarithmic function. Arizona has 12 Class I areas within its borders: The Chiricahua National Monument, Chiricahua Wilderness Area, Galiuro Wilderness Area, Grand Canyon National Park, Mazatzal Wilderness Area, Mount Baldy Wilderness Area, Petrified Forest National Park, Pine Mountain Wilderness, Saguaro National Park, Sierra Ancha Wilderness Area, Superstition Wilderness Area, and Sycamore Canyon Wilderness Area. For this Progress Report, monitoring data representing visibility conditions in Arizona's 12 Class I areas were based on the ten IMPROVE monitors identified in Table 2.

TABLE 2—ARIZONA IMPROVE MONITORING SITES AND REPRESENTED CLASS I AREAS

Site code	Class I area
BALD1	Mount Baldy Wilderness.
CHIR1	Chiricahua National Monument, Chiricahua Wilderness & Galiuro Wilderness.
GRCA2	Grand Canyon National Park.
IKBA1	Mazatzal Wilderness & Pine Mountain Wilderness.
PEFO1	Petrified Forest National Park.
SAGU1	Saguaro National Monument—East Unit.
SAWE1	Saguaro National Monument—West Unit.
SIAN1	Sierra Ancha Wilderness.
SYCA2	Sycamore Canyon Wilderness.
TONT1	Superstition Wilderness.

Source: 2015 Arizona Regional Haze 5-Year Progress Report, Table 17, 25.

Under the RHR, a state's initial regional haze plan must establish two RPGs for each of its Class I areas: One for the 20 percent least impaired days and one for the 20 percent most impaired days. The RPGs must provide for an improvement in visibility on the 20 percent most impaired days and ensure no degradation in visibility on the 20 percent least impaired days, as compared to visibility conditions during the baseline period. In establishing the RPGs, a state must consider the uniform rate of visibility improvement from the baseline to natural conditions in 2064 and the emission reduction measures needed to achieve that uniform rate. The EPA's 2014 FIP set the RPGs for Arizona's 12 Class I areas based on modeling performed by the Western Regional Air Partnership (WRAP), scaled according to projected emission reductions from the FIP's controls for best available retrofit technology (BART) and reasonable progress. Arizona used these RPGs in its Progress Report.[8]

In addition, the Progress Report addresses Arizona's potential contribution to visibility impairment at twelve Class 1 areas located in three other states: Colorado, Utah, and New Mexico.

B. Data Sources for Arizona's Progress Report

To demonstrate visibility progress, the Arizona Department of Environmental Quality (ADEQ) used recent visibility information available from the WRAP Technical Support System (TSS). It also used the technical data and analyses in the ''Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report'' (''WRAP Report''), dated June 28, 2013.[9] The WRAP Report was prepared for WRAP ''on behalf of the 15 western state members in the WRAP region, to provide the technical basis for the first of RHR individual progress reports.'' [10] ADEQ's Progress Report presented data for each of its Class I areas comparing visibility conditions for the 20 percent most impaired and 20 percent least impaired days during the baseline period (2000–2004), the current period for the Progress Report (2009–2013), and years between those periods. ADEQ also relied on WRAP TSS data for its emissions inventory.

The emissions data for BART sources and non-BART electrical generating units (EGUs) came from information the facilities report to the EPA's Clean Air Markets Division (CAMD) database. Emissions data for non-electric generating unit (non-EGU) sources came from the 2008 and 2011 National Emissions Inventory as well as ADEQ's internal point source emission database. ADEQ also calculated emissions averted from prescribed burning of nonagricultural fuels using WRAP-recommended emission reduction techniques.

III. The EPA's Review of Arizona's Progress Report

This section describes the contents of Arizona's Progress Report, the EPA's review of the report, the determination of adequacy required by 40 CFR 51.308(h), and the requirement for state and federal land manager coordination in 40 CFR 51.308(i).

A. Status of Implementation of All Measures Included in the Regional Haze Implementation Plan

In its Progress Report, Arizona provided descriptions and compliance dates for emissions limits on the seven BART sources established through the Arizona Regional Haze SIP [11] and the Arizona Regional Haze FIP.[12] The Progress Report also described controls and compliance dates for two reasonable progress sources that the EPA established in the Arizona Regional

[7] Letter dated November 12, 2015, from Eric C. Massey, Director, Air Quality Division, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[8] The RPGs are shown in Table 10 of today's action.

[9] 2015 Arizona Regional Haze 5-Year Progress Report, 2.

[10] The WRAP Report is available at *http://www.wrapair2.org/documents/Full%20Report/WRAP_RHRPR_Full_Report_without_Appendices.PDF.*

[11] We refer to the approved provisions of the Arizona Regional Haze Plan (including approved revisions) collectively as the ''Arizona Regional Haze SIP.''

[12] We refer to the various FIP requirements promulgated by the EPA collectively as the ''Arizona Regional Haze FIP.''

Haze FIP.[13] The Progress Report addressed the status of these sources at the time of the Report's submittal in 2015. However, most of the compliance dates for these sources had not yet passed at the time of the Report's submittal, so information regarding compliance was not available. Following submittal of the Progress Report, the EPA has taken several actions to approve revisions to the Arizona Regional Haze SIP and to revise the Arizona Regional Haze FIP, as shown in Table 1 above. These revisions superseded some of the SIP requirements discussed in the Progress Report. The RHR requires a progress report to address the ''implementation plan,'' defined in 40 CFR 51.301 as any SIP, FIP, or tribal implementation plan.[14] Accordingly, in the following sections, we summarize the currently applicable requirements of the Arizona Regional Haze SIP and Arizona Regional Haze FIP, as described in the Progress Report and revised by subsequent SIP and FIP actions.

As described further below, beyond stationary source controls required in the SIP and FIP, ADEQ also included visibility progress made from the closure of certain stationary sources, existing federal and state regulations, and the State's Enhanced Smoke Management Program.[15]

1. Subject-to-BART Sources

Under the RHR, states are directed to conduct BART determinations for BART-eligible[16] sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area (known as ''subject-to-BART'' sources).[17] States also have the flexibility to adopt alternatives that provide greater reasonable progress towards natural visibility conditions than BART for one or more subject-to-BART sources (commonly known as ''better-than-BART'' alternatives).[18] The Arizona Regional Haze SIP and Arizona Regional Haze FIP identified seven subject-to-BART facilities (*i.e.,* facilities that include one or more BART-eligible units and were determined to be subject to BART): AEPCO Apache Generating Station; APS Cholla Generating Station; SRP Coronado Generating Station; Freeport-McMoRan Miami, Inc. Miami Smelter; ASARCO, Inc., (''Asarco'') Hayden Smelter; Tucson Electric Power (TEP) Sundt Generating Station; and the Nelson Lime Plant. The Arizona Regional Haze SIP and Arizona Regional Haze FIP establish BART or better-than-BART alternative controls for NO_X, particulate matter (PM), and sulfur dioxide (SO_2) for each of these sources.

a. Apache Generating Station

The Apache Generating Station (''Apache'') has three BART-eligible units: ST1, ST2, and ST3. Unit ST1 is a wall-fired boiler with a net unit output of 85 megawatts (MW) that burns pipeline-quality natural gas as its primary fuel and can operate alone or in combined-cycle mode with an adjacent Gas Turbine (GT1). Units ST2 and ST3 are both dry-bottom, Riley Stoker turbo-fired boilers, operating on sub-bituminous coal, each with a gross unit output of 204 MW.

On December 5, 2012, the EPA approved the State's SO_2 and PM BART limits for Apache and established FIP NO_X emission limits for units ST2 and ST3 based on installation and operation of selective catalytic reduction (SCR). On April 10, 2015, the EPA approved a SIP revision for Apache (''Apache SIP Revision'') that included a better-than-BART alternative for Apache units ST2 and ST3 (''Apache BART Alternative'') and a revised NO_X emission limit for ST1 that applies when it operates in combined-cycle mode with the adjacent GT1.[19] Under the Apache BART Alternative, ST2 was converted from a primarily coal-fired unit to a unit that combusts pipeline-quality natural gas, while ST3 remains as a coal-fired unit and has been retrofitted with selective non-catalytic reduction (SNCR). The emission limits associated with the Apache BART Alternative are summarized in Table 3. The compliance date for all limits was December 5, 2017, except that a more stringent limit for PM_{10} of 0.008 pounds per million British thermal units (lb/MMBtu) at ST2 that became effective on December 5, 2018.

TABLE 3—EMISSION LIMITS FOR APACHE BART ALTERNATIVE

Unit	Emission Limit (lb/MMbtu, averaged over 30 boiler operating days)		
	NO_X	PM_{10}	SO_2
ST2	0.085	0.01, then 0.008 (effective December 5, 2018)	0.00064
ST3	0.23	0.03	0.15

The Apache SIP Revision also included a revised NO_X emission limit for the combined-cycle operation of ST1 with GT1 from 0.056 lb/MMBtu to 0.10 lb/MMBtu and set a 1,205 lb/day NO_X limit, based on a 30-calendar-day average, for ST1 operating in stand-alone mode or in combined-cycle mode with GT1. Finally, the Apache SIP Revision incorporated monitoring, recordkeeping, and reporting requirements for the existing ST1 BART SIP limits of 0.00064 lb SO_2/MMBtu and 0.0075 lb PM_{10}/MMBtu into the SIP. Upon approval of the Apache SIP Revision, the EPA withdrew all Regional Haze FIP requirements that addressed BART for Apache.[20]

b. Cholla Generating Station

Cholla Generating Station (''Cholla'') consists of four coal-fired electric generating units with a total plant-wide generating capacity of 1150 MW. Unit 1 is a 126 MW boiler that is not BART-eligible. Unit 2 (272 MW), Unit 3 (272 MW), and Unit 4 (410 MW) are tangentially-fired dry bottom boilers that are BART-eligible. On December 5, 2012, the EPA approved the State's SO_2 and PM BART limits for Cholla and established FIP NO_X emission limits for all three units based on installation and operation of SCR.

On March 27, 2017, the EPA approved a SIP revision for Cholla (''Cholla SIP

[13] These sources were not subject to BART, but the EPA determined that they were required to implement controls under the reasonable progress requirements of the RHR.

[14] No tribe in Arizona has a tribal implementation plan for regional haze.

[15] 2015 Arizona Regional Haze 5-Year Progress Report, 13–18.

[16] A BART-eligible source is an existing stationary source in any of 26 listed categories built between 1962 and 1977 with potential emissions of at least 250 tons per year. 40 CFR 51.301 and 40 CFR part 51 appendix Y, section II.

[17] 40 CFR 51.308(e).

[18] 40 CFR 51.308(e)(2).

[19] 80 FR 19220 (April 10, 2015).

[20] Id.

Revision'') that included a revised BART analysis and determination for NO_X and a revision to Cholla's operating permit to implement both the revised BART determination for NO_X and ADEQ's prior BART determinations for SO_2 and PM_{10} at Cholla.[21] Under the revised NO_X BART determination:

- Unit 2 was permanently shut down by April 1, 2016.
- Unit 3 and Unit 4 continue to operate with currently installed low-NO_X burners and separated over fire air. By April 30, 2025, the owners will permanently cease burning coal at both units with the option to convert to pipeline-quality natural gas by July 31, 2025, with an annual average capacity factor of 20 percent or less.

Upon approval of the Cholla SIP Revision, the EPA withdrew all Regional Haze FIP requirements applicable to Cholla.[22] The current SIP-approved BART limits for Cholla are shown in Table 4.

TABLE 4—CHOLLA BART EMISSION LIMITS

Unit	Dates	Emission limit (lb/MMbtu, averaged over 30 boiler operating days)		
		NO_X	PM_{10}	SO_2
Unit 2	Unit shut down on April 1, 2016.			
Unit 3	until April 30, 2025	0.22	0.015	0.15
	after April 30, 2025	0.08	0.01	0.0006
Unit 4	until April 30, 2025	0.22	0.015	0.15
	after April 30, 2025	0.08	0.01	0.0006

c. Coronado Generating Station

Coronado Generating Station (''Coronado'') consists of two BART-eligible 456 MW coal-fired steam boilers, known as Units 1 and 2. On December 5, 2012, the EPA approved the State's SO_2 and PM BART limits for Coronado and established FIP NO_X emission limits for both units based on installation and operation of SCR.

On October 10, 2017, the EPA approved a SIP revision that included a better-than-BART alternative for Coronado (''Coronado SIP Revision''), consisting of an interim operating strategy (''Interim Strategy''), which is in effect from December 5, 2017, to December 31, 2025, and a final operating strategy (''Final Strategy''), which will take effect on January 1, 2026.[23] The requirements associated with the Interim and Final Strategies are shown in Table 5 and summarized briefly below.

The Interim Strategy includes three different operating options (designated IS2, IS3, and IS4), each of which requires a period of seasonal curtailment (*i.e.,* temporary closure) for Unit 1. Each year, SRP must select and implement one of the three options, based on the NO_X emissions performance of Unit 1 and the SO_2 emissions performance of Units 1 and 2 in that year. In particular, by October 21 of each year, SRP must notify ADEQ and the EPA of its chosen option for that calendar year (and for January of the following year) and demonstrate that its NO_X and SO_2 emissions for that year (up to the date of the notification) have not already exceeded the limits associated with that option. SRP then must comply with those limits for the remainder of the year (and for January of the following year) and curtail operation of Unit 1 for the time period required under that option. In addition, under each option, the facility must comply with an annual plant-wide SO_2 emissions cap of 1,970 tons per year (tpy) effective in each year, beginning in 2018.

The Final Strategy in the Coronado SIP Revision requires installation of SCR on Unit 1 or the permanent cessation of operation of Unit 1 no later than December 31, 2025. SRP is required to notify ADEQ and the EPA of its selection by December 31, 2022. The Final Strategy includes two additional features: An SO_2 emission limit of 0.060 lb/MMBtu, calculated on a 30-boiler operating day (BOD) rolling average and applicable to Unit 2 (as well as Unit 1 if it continues operating), and an annual plant-wide SO_2 emissions cap of either 1,970 tpy if both units continue operating or 1,080 tpy if Unit 1 shuts down.

TABLE 5—SUMMARY OF CORONADO BART ALTERNATIVE

Control strategy	Unit 1 (lb/MMBtu with 30–BOD average)		Unit 2 (lb/MMBtu with 30–BOD average)		Annual plant-wide SO_2 cap (tpy)	Unit 1 curtailment period
	NO_X	SO_2	NO_X	SO_2		
Interim Strategy:						
IS2	0.320	0.060	0.080	0.060	1,970	October 21–January 31
IS3	0.320	0.050	0.080	0.050	1,970	November 21–January 20
IS4	0.310	0.060	0.080	0.060	1,970	November 21–January 20
Interim Strategy Timeline.	Notification date: October 21 of each year. Operates December 5, 2017 to December 31, 2025.					
Final Strategy:						
SCR Installation	0.065	0.060	0.080	0.060	1,970	N/A.
Shutdown	N/A	N/A	0.080	0.060	1,080	N/A.

[21] 82 FR 15139 (March 27, 2017).

[22] Id.

[23] 82 FR 46903.

TABLE 5—SUMMARY OF CORONADO BART ALTERNATIVE—Continued

Control strategy	Unit 1 (lb/MMBtu with 30–BOD average)		Unit 2 (lb/MMBtu with 30–BOD average)		Annual plant-wide SO_2 cap (tpy)	Unit 1 curtailment period
	NO_X	SO_2	NO_X	SO_2		
Final Strategy Timeline	Notification date: December 31, 2022. Shutdown or install & operate SCR: December 31, 2025.					

The Coronado SIP revision also included PM_{10} limits of 0.030 lb/MMBtu for each unit, as well as compliance deadlines and monitoring, recordkeeping, and reporting requirements for NO_X, PM and SO_2. Upon approval of the Coronado SIP revision, the EPA withdrew all Regional Haze FIP requirements applicable to Coronado.[24]

d. Miami Smelter

The Arizona Regional Haze SIP and Arizona Regional Haze FIP include BART requirements for Converters 2 through 5 and the electric furnace at the Miami Smelter. For SO_2 from the converters, the BART emission limit is a control efficiency of 99.7 percent on a 365-day rolling average. For SO_2 from the electric furnace, the BART emission limit is a work practice standard prohibiting active aeration. For NO_X, a 40 tpy limit applies to the converters and electric furnace. For PM_{10}, the FIP incorporates by reference provisions of the national emission standards for hazardous air pollutants for primary copper smelters. Compliance with the SO_2 emission limit for the converters was required by January 1, 2018, and compliance with all other provisions was required by September 2, 2016.

e. Hayden Smelter

The Arizona Regional Haze SIP and Arizona Regional Haze FIP include BART requirements for converters 1, 3, 4, and 5, and anode furnaces 1 and 2 at the Hayden Smelter. Pursuant to a consent decree with the United States, Asarco was required to cease operations at the existing converters by May 1, 2018.[25] Accordingly, the anode furnaces are the only subject-to-BART units still in operation at the Hayden copper smelter. As of September 4, 2017, these units were required to meet an annual NO_X emission limit of 40 tpy and only be charged with blister copper or higher purity copper in order to limit SO_2 emissions.

f. Sundt Unit 4

The Arizona Regional Haze FIP includes BART emissions limits and the option of a better-than-BART alternative based on a switch from coal to natural gas for TEP Sundt Unit 4. On March 14, 2016, TEP notified the EPA that it had selected the alternative option and would comply with the associated emission limits by the compliance date of December 31, 2017.[26] These limits are 0.25 lb/MMBtu for NO_X, 0.054 lb/MMBtu for SO_2, and 0.010 lb/MMBtu (or an alternative limit determined by testing) for PM_{10}.

g. Nelson Lime Plant

The Arizona Regional Haze FIP includes BART emissions limits for Kilns 1 and 2 at the Nelson Lime Plant. The limits for NO_X are 3.80 lb/ton of lime for Kiln 1 and 2.61 lb/ton of lime for Kiln 2 on a 12-month rolling average with a compliance date of September 4, 2017. The limits for SO_2 are 9.32 lb/ton of lime for Kiln 1 and 9.73 lb/ton of lime for Nelson Kiln 2 on a 12-month rolling average, and 10.1 tons/day for both kilns combined with a compliance date of March 3, 2016.

2. Reasonable Progress Sources

The Arizona Regional Haze FIP includes NO_X emission limits and related requirements for CPC Rillito Kiln 4 and PCC Clarkdale Kiln 4 under the reasonable progress requirements of the RHR. Both kilns are subject to 30-day rolling average NO_X limits achievable with installation and operation of SNCR, with a compliance date of December 31, 2018. The limit for Rillito Kiln 4 is 3.46 lb NO_X/ton of clinker, and the limit for Clarkdale Kiln 4 is 2.12 lb NO_X/ton of clinker.[27]

3. Closure of Existing Facilities

In its Progress Report, ADEQ explained that Catalyst Paper, which was a subject-to-BART source, closed permanently in 2012. The total emissions from its boiler unit were more than 250 tons per year of NO_X and SO_2. ADEQ noted in the Arizona Regional Haze State Plan that this boiler had a visibility impact of 0.739 deciviews on the Sierra Ancha Wilderness area and 0.523 deciviews on the Superstition Wilderness area. The closure of this facility eliminated its emissions and corresponding visibility impacts.

4. Existing Federal and State Regulations

ADEQ's Progress Report identified several federal and State programs that contributed to emissions reductions in visibility-impairing pollutants.

The federal programs included in the Progress Report were: The Heavy-Duty Highway Rule, which reduced pollution from heavy-duty engines and diesel fuel; the Tier 2 and Tier 3 Vehicle and Gasoline Sulfur Program, which reduced emissions from passenger and light-duty vehicles and gasoline; the Non-Road Engine Program, which reduced emissions from non-road engines; the Mercury and Air Toxics Rule, which reduced pollution from power plants; and requirements to implement the national ambient air quality standards.

The state regulations described in the Progress Report were: The Arizona State Vehicle Emissions Inspection Program, which reduces emissions from cars; and Arizona's New Source Review Program, which addresses emissions from stationary sources.

5. Smoke Management

In the Progress Report, ADEQ noted that it implements a certified Enhanced Smoke Management Program that works toward a reduction in smoke impacts due to prescribed/controlled burning of nonagricultural fuels with particular regard to heavy forest fuels. All State lands, parks, and forests, as well as any federally-managed lands in Arizona, are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning. The EPA has approved the state and local rules that comprise the Enhanced Smoke

[24] Id.

[25] Consent Decree No. CV–15–02206–PHX–DLR (D. Ariz) (entered December 30, 2015), paragraph 8.

[26] Letter dated March 14, 2016, from Erik Bakken, TEP, to Kathleen Johnson, EPA Region IX.

[27] The FIP provided an alternative limit of 810 tons NO_X/year for Clarkdale Kiln 4, but PCC elected to comply with the lb/ton limit. Letter dated May 25, 2018 from Brett Lindsay, Environmental and Energy Manager, PCC, to EPA Region IX Enforcement Division and Air Division.

Management Program into the Arizona SIP.[28]

B. Summary of Emissions Reductions

The Arizona Progress Report also includes a summary of the emissions reductions achieved throughout the State through implementation of the control measures relied upon to achieve reasonable progress. ADEQ examined the emissions of SO_2, NO_X, primary organic aerosols (POA), elemental carbon (EC), fine soil, fine particulate matter, coarse particulate matter (PMC), ammonia (NH_3), and volatile organic compounds (VOCs) and determined its emissions reductions are adequate to achieve Arizona's RPGs. For the statewide emissions inventory, ADEQ used WRAP TSS data and other information from WRAP to analyze emissions for 2002 (the baseline year), 2008, and 2011 (the most current year for which data were available). ADEQ stated in its Progress Report that these years were selected because they provided the most comprehensive data. For BART sources, EGUs, and other facilities that were subject to reasonable progress controls, ADEQ provided annual emissions data from 2002–2013. The sources of that information were the EPA's CAMD,[29] the 2008 and 2011 National Emissions Inventories, and ADEQ's point source emissions database.

ADEQ provided statewide emissions trends for SO_2, NO_X, POA, EC, Fine Soil, PMC, NH_3, and VOCs. The emissions trends are summarized in Table 6.

TABLE 6—STATEWIDE EMISSIONS TRENDS OF VISIBILITY-IMPAIRING POLLUTANTS (TONS/YEAR)

	SO_2	NO_X	POA	EC	Fine soil	PMC	NH_3	VOC
2002	111,709	368,498	57,754	14,745	25,294	158,099	42,203	1,889,682
2008	86,314	293,114	23,972	10,789	48,288	240,570	42,457	894,010
2011	77,657	264,708	50,057	18,054	50,352	381,306	49,131	1,272,342
Percent (%) Change 2002 to 2011	−30%	−28%	−13%	22%	99%	141%	16%	−33%

Source: 2015 Arizona Regional Haze 5-Year Progress Report, Table 19, page 48.

VOC emissions decreased by approximately 33 percent from 2002 to 2011. However, changes to WRAP modeling techniques over time improved the accuracy of biogenic emissions, which makes this direct comparison of VOC emissions across years uncertain. These changes included different meteorological models, variability of land cover, and improved emissions factors based on better sources of data.[30] Table 7 summarizes VOC emissions by source.

TABLE 7—VOC EMISSIONS BY SOURCE (TONS/YEAR)

	2002	2008	2011
Point	5,464	3,490	3,414
Anthropogenic Fire	855	5,781	10,053
Natural Fire	36,377	1,330	222,314
Biogenic	1,576,698	686,255	880,219
Area	102,918	100,256	67,622
WRAP Area O&G	46	12	65
On-Road Mobile	110,424	54,589	49,387
Off-Road Mobile	56,901	42,297	39,268
Fugitive/Road Dust	0.00	0.00	0.00
WB Dust	0.00	0.00	0.00
Total	1,889,682	894,010	1,272,342

Source: 2015 Arizona Regional Haze 5-Year Progress Report, page 50.

As shown in Table 6, total emissions of SO_2 and NO_X decreased consistently from 2002 to 2011. The approximately 30 percent reduction in SO_2 from 2002 to 2011 was mainly attributed to controls on point source facilities. The approximately 29 percent reduction in NO_X was mainly attributed to point sources and on-road mobile sources.

Reported total PM emissions (categorized as PMC, fine soil, EC, and POA) increased consistently from 2002 to 2011. The total increase from 2002 to 2011 was approximately 92 percent. The largest contributor to this increase was PMC, which was primarily made up of windblown dust and fugitive/road dust. Not only did the amount of reported PMC increase at each inventory year, but the percentage of PMC within the total particulate matter emissions also increased over time. Some of this change may be due to improvements in WRAP methodologies for estimating PMC emissions. As we noted in our supplemental Phase 2 proposal on the Arizona Regional Haze SIP, emissions inventories for particulate matter may be uncertain, largely because emissions of fugitive/road dust and windblown dust are difficult to calculate accurately.[31] Therefore, for purposes of Regional Haze, we generally consider IMPROVE monitoring data for these pollutants to be more informative than emissions inventories. As described below, the overall monitoring data for all Class I areas in Arizona have shown improvements in visibility for the 20 percent most and least impaired days between the baseline (2000–2004) and current (2009–2013) visibility periods. However, as shown in Table 8, species-specific monitoring data show that visibility impairment from coarse mass and fine soil increased in some Class I areas and decreased in other areas between the baseline and progress

[28] 71 FR 28270 (May 16, 2006) and 72 FR 25973 (May 8, 2007).

[29] CAMD provides emissions and other data for certain large stationary sources through the Air Markets Program Data tool available at *https://ampd.epa.gov/ampd/*.

[30] WRAP Regional Haze Rule Reasonable Progress Report Support Document. Table 3.2–1. *http://www.wrapair2.org/documents/SECTIONS%201.0%20-%203.0/WRAP_RHRPR_Sec_1-3_Background_Info.pdf.*

[31] 78 FR 29292, 29297 (May 20, 2013).

periods. Therefore, while the monitoring data generally show progress, as we noted in the supplemental Phase 2 proposal on the Arizona Regional Haze SIP, it will be necessary to more closely examine the potential visibility impacts of fugitive and road dust on Arizona's Class I areas in the second and future planning periods.[32]

TABLE 8—VISIBILITY IMPAIRMENT FROM FINE SOIL AND PMC ON 20 PERCENT WORST DAYS (Mm^{-1})

IMPROVE monitor	Class I area	Fine soil			PMC		
		Baseline 2000–2004	Current 2009–2013	Difference [a]	Baseline 2000–2004	Current 2009–2013	Difference
BALD1	Mount Baldy Wilderness	1.1	1.3	0.2	2.8	3.5	0.7
CHIR1	Chiricahua National Monument, Chiricahua Wilderness & Galiuro Wilderness.	2.7	1.9	−0.8	8.6	7.4	−1.2
GRCA2	Grand Canyon National Park	1.3	1.2	−0.1	3.5	3.2	−0.3
IKBA1	Mazatzal Wilderness & Pine Mountain Wilderness	2.6	2.3	−0.3	6.2	6.2	0.0
PEFO1	Petrified Forest National Park	2.0	2.1	0.1	7.3	6.4	−0.9
SAGU1	Saguaro National Monument—East Unit	3.4	2.5	−0.9	7.1	8.0	0.9
SAWE1	Saguaro National Monument—West Unit	5.8	3.6	−2.2	12.8	11.2	−1.6
SIAN1	Sierra Ancha Wilderness	2.2	1.8	−0.4	5.9	4.4	−1.5
SYCA2	Sycamore Canyon Wilderness	6.8	5.6	−1.2	9.4	9.8	0.4

[a] Calculated as the difference between the baseline period (2000–04) and current conditions (2009–13). A negative difference indicates a reduction in haze, *i.e.,* improved visibility.
Source: 2015 Arizona Regional Haze 5-Year Progress Report, pages 26–44.

Under the Arizona Regional Haze SIP and FIP, stationary sources were required to reduce SO_2, NO_X, and PM_{10}. Arizona's Progress Report included annual emissions data from 2002–2013 for BART sources that are EGUs, BART sources that are not EGUs, and non-BART sources that were subject to reasonable progress controls for visibility-impairing emissions. Although there was variation in emissions during the years between 2002 and 2013, the emissions for all sources in 2013 were lower than emissions in 2002. For BART EGU sources, ADEQ noted that although emissions had decreased from 2002–2013, heat input had increased, indicating that the emissions reductions were the result of pollution controls, not reduced operations. ADEQ also noted that for all these facilities, further reductions were expected to occur by 2018, either due to BART controls or to reasonable progress controls.[33] Table 9 summarizes stationary source emissions.

TABLE 9—STATIONARY SOURCE EMISSIONS (TONS/YEAR)

Year	BART sources—EGUs			BART sources—non-EGUs			Non-BART, non-EGU		
	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}	SO_2	NO_X	PM_{10}
2002	46,798	32,714	[a] 1,215	26,330	3,080	996	292	8,895	1,600
2013	11,025	25,337	1,322	23,364	1,826	607	10	2,649	301

[a] PM_{10} data were not available for Sundt (Irvington) Generating Station.
Source: 2015 Arizona Regional Haze 5-Year Progress Report, Tables 13–15.

Arizona's Progress Report also described $PM_{2.5}$ emissions that were averted from 2009–2014 through its Enhanced Smoke Management Program.

C. Summary of Visibility Conditions

ADEQ's Progress Report provided visibility data for each of the State's Class I areas during the baseline period (2000–2004), the current period for the progress report (2009–2013), and for the rolling 5-year periods between the baseline and current periods. The Report compared those data with the 2018 RPGs for each area. The Report also compared the visibility progress to the Uniform Rate of Progress (URP)[34] for the worst days. However, the RHR does not require a progress report to compare current or projected visibility conditions to the URP.[35] Consequently, the RPGs are the relevant comparison points for evaluating whether the progress report meets the RHR requirements for reporting visibility progress during this first planning period. These RPGs are listed in Table 10 along with the baseline and current (as of the submission of the Progress Report) visibility conditions.

TABLE 10—ARIZONA CLASS I AREA VISIBILITY CONDITIONS ON THE 20 PERCENT MOST AND LEAST IMPAIRED DAYS [a]

Improve monitor	Class I area	Best days (deciviews)			Worst days (deciviews)		
		Baseline 2000–2004	2018 RPG	Current 2009–2013	Baseline 2000–2004	2018 RPG	Current 2009–2013
BALD1	Mount Baldy Wilderness	3.0	2.8	2.7	[b] 11.8	11.4	10.5
CHIR1	Chiricahua National Monument, Chiricahua Wilderness & Galiuro Wilderness.	4.9	4.8	4.1	13.4	13.2	12.1
GRCA2	Grand Canyon National Park	2.2	2.0	1.8	11.7	11.0	10.9

[32] Id. at 29298.

[33] See section III.A above for a summary of these controls and the associated compliance dates.

[34] The URP is a straight line from the baseline visibility condition (5-year annual average from 2000–2004) to the estimated natural background condition in 2064, as measured on the 20 percent best and worst days. The URP values for 2018 are the number of deciviews where the lines drawn to 2064 for best and worst days intersect 2018.

[35] 79 FR 52419, 52426 (September 3, 2014).

TABLE 10—ARIZONA CLASS I AREA VISIBILITY CONDITIONS ON THE 20 PERCENT MOST AND LEAST IMPAIRED DAYS [a]—Continued

Improve monitor	Class I area	Best days (deciviews)			Worst days (deciviews)		
		Baseline 2000–2004	2018 RPG	Current 2009–2013	Baseline 2000–2004	2018 RPG	Current 2009–2013
IKBA1	Mazatzal Wilderness & Pine Mountain Wilderness.	5.4	5.1	4.4	13.3	12.6	12.0
PEFO1	Petrified Forest National Park	5.0	4.6	4.1	13.2	12.6	11.9
SAGU1	Saguaro National Monument—East Unit	6.9	6.9	6.1	14.8	14.7	12.6
SAWE1	Saguaro National Monument—West Unit	8.6	8.2	7.5	16.2	15.9	14.2
SIAN1	Sierra Ancha Wilderness	6.2	5.78	4.9	13.7	13.05	12.2
SYCA2	Sycamore Canyon Wilderness	5.6	5.39	5.1	15.3	14.92	14.6
TONT1	Superstition Wilderness	6.5	6.09	5.2	14.2	13.72	12.7

Source: 2015 Arizona Regional Haze 5-Year Progress Report, Table 17.
[a] Due to rounding, some values in this table differ slightly from those in the Arizona Regional Haze SIP and Arizona Regional Haze FIP.
[b] The baseline worst days value for BALD1 was incorrectly listed as 11.95 deciviews in Tables 9 and 10 in the EPA's Phase 3 FIP final rule. 79 FR 52469–52470 (September 3, 2014). The correct value of 11.85 deciviews is found in Arizona's 2011 Submittal, Table 6.3.

Based on the information in Chapter 4 of the Progress Report, Arizona demonstrated that all Class I areas experienced improvements in visibility (*i.e.,* reductions in deciviews) for the 20-percent most and least impaired days between the baseline (2000–2004) and current (2009–2013) visibility periods, as summarized in Table 10 above and shown in Table 17 of the Progress Report. The same table also shows that the five-year average worst days and best days during the current (2009–2013) period were below (*i.e.,* better than) the 2018 RPGs. Thus, all of the State's Class I areas are on track to meet or surpass their 2018 RPGs. As part of a comprehensive SIP revision due by July 31, 2021, the State will be required to adopt 2028 RPGs, which will reflect new control measures adopted to meet the requirements of the Regional Haze Rule and other CAA requirements.[36]

In addition, the Progress Report explains that the significant reductions in NO_X and SO_2 emissions discussed in the previous section have also mitigated Arizona's contribution to visibility impairment in Class I areas in nearby states.[37]

The Progress Report also contains a review of Arizona's visibility monitoring strategy. In the Progress Report, ADEQ notes that the Grand Canyon—Indian Garden IMPROVE monitoring station shut down in 2013. The Report states that Arizona uses the GRCA2 monitoring station for Grand Canyon National Park, so the closure of the Indian Gardens monitor will not affect the reliability of the IMPROVE network in Arizona.

D. Determination of Adequacy

Within the Progress Report, the State of Arizona provided a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1). The basis for the State's negative declaration is the information in the Progress Report and the determination that Arizona is currently on track to achieve all 2018 RPGs for the State's Class I areas. Given the large reductions in SO_2 and NO_X emissions and the significant improvements in visibility at the State's Class I areas achieved during the planning period, the EPA proposes to approve Arizona's determination that the existing Arizona SIP requires no substantive revisions at this time to achieve the established 2018 RPGs for Class I areas. As mentioned above, the State is required to submit a comprehensive SIP revision for the next planning period, including RPGs for 2028, by July 31, 2021.[38]

E. Consultation With Federal Land Managers (FLMs)

The State of Arizona invited the FLMs to comment on its draft progress report on August 24, 2015. Arizona received comments from one FLM, the National Park Service, which indicated that the Progress Report met the applicable requirements and requested additional information and other minor changes. ADEQ responded to the FLM comments and revised the Progress Report accordingly, as documented in Appendix A of the Progress Report. The EPA proposes to find that Arizona has addressed the requirements for FLM consultation in 40 CFR 51.308(i).

IV. The EPA's Proposed Action

The EPA is proposing to approve the Arizona Regional Haze Progress Report submitted to the EPA on November 12, 2015, as meeting the applicable requirements of the CAA and RHR, as set forth in 40 CFR 51.308(g). The EPA proposes to approve Arizona's determination that the existing regional haze implementation plan is adequate to meet the State's 2018 visibility goals and requires no substantive revision at this time. We also propose to find that Arizona fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with FLMs.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations.[39] Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because actions such as SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

[36] 40 CFR 51.308(f)(3)(i).
[37] 2015 Arizona Regional Haze 5-Year Progress Report, Table 17.
[38] 40 CFR 51.308(f)(3)(i).
[39] 42 U.S.C. 7410(k); 40 CFR 52.02(a).

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: March 14, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–05769 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1092; FRL–9991–39–Region 5]

Air Plan Approval; Michigan; Permit To Install Public Hearing Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit to Install requirements for public participation of permitting actions. Additionally, the action contains changes to the rule which address permit emission limits that are enforceable as a practical matter.

DATES: Comments must be received on or before April 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1092 at *https://www.regulations.gov,* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, *blathras.constantine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Review of State Submittal
III. What Action is EPA Taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background

Section 110(a)(2)(C) of the Clean Air Act requires that the SIP include a program to provide for the ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' This includes a program for permitting construction and modification of both major and minor sources that the state deems necessary to protect air quality. The State of Michigan's minor source permit to install rules are contained in Part 2 (Air Use Approval) of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

Michigan originally submitted its Michigan R 336.1205 (rule 205) as a revision to its Part 2 SIP on May 16, 1996. The most recent version of rule 205 was submitted to EPA on March 24, 2009 and has a state effective date of June 20, 2008. EPA published a proposed approval of all Part 2 changes, except rule 205, on August 15, 2017 (82 FR 38651). EPA took no action to approve rule 205 at that time. Most recently, EPA approved changes to the Part 2 rules (except rule 205) in a final approval dated August 31, 2018 (83 FR 44485). In this action, EPA is proposing approval to revisions to the SIP for Michigan rule 205 and 324.5511(3) of the Michigan Natural Resources and Environmental Protection Act. Rule 205 is titled ''Permit to install; approval.'' and is a section of the Part 2 air use approval rules of the Michigan Administrative Code that specifies the requirements for issuance of air pollutant construction permits. Michigan Act 451, Part 55, section 324.5511(3) defines the permitting actions requiring public comment and public hearing opportunities.

II. Review of State Submittal

(1) R 336.1205 (Rule 205) of Michigan's Part 2 Air Permit Rules

The provisions of rule 205 require a permit to install that includes limitations which restrict the potential to emit from a stationary source, process, or process equipment to a quantity below that which would otherwise constitute a major source or major modification under any part of the Part 2 air permit rules. The permit to install must contain adequate emission limits that are enforceable as a practical matter; with a consideration to the time-period, production, emission, usage and/or operational limits that

restrict the source's potential to emit in order to demonstrate compliance.

Michigan rule 205 describes the content and public participation process for the Michigan Department of Environmental Quality (MDEQ), as the permitting authority, to act on certain permits which need to be ''federally enforceable'' or enforceable as a practical matter. Additionally, the rule also prescribes these requirements for any permit issued under Section 112 of the Clean Air Act. This rule incorporates guidance published by EPA in the **Federal Register** on June 28, 1989 (54 FR 27274) on limiting a source's potential to emit. The rule applies only to sources and modifications defined as ''major'' under Federal regulations and to sources which would be subject to the ''major'' requirements except for conditions contained in the permit which limit the potential to emit to less than the applicable emission thresholds. Sources which accept conditions which limit the potential to emit to something less than the true design capacity of the equipment being installed are referred to as ''synthetic minor'' sources. The Michigan rule sets a deminimus level for these ''synthetic minor'' sources at 50% of the applicable emission threshold.

Rule 205 specifies that the draft permit is subject to the public participation process specified in section 324.5511(3) of Michigan Act 451. The requirements of section 324.5511(3) are reviewed and further described below. Lastly, Michigan, at its discretion, may approve a permit to install that includes limitations restricting the potential to emit of the stationary source without meeting the requirements of section 324.5511(3) if the emission limitations restrict the potential to emit of the source to less than 90% of the quantity referenced in the applicable requirement.

(2) 324.5511(3) of Michigan Act 451

In its May 1996 submittal, MDEQ requested that all of Part 55 of Act 451 of the 1994 Michigan act be approved as a revision to the Michigan SIP in addition to rule 205 and other sections of Michigan's Part 2 air permit program rules. EPA did not act on the request to include Part 55 of the Michigan act into the Michigan SIP, nor did we approve rule 205. Upon EPA's review of the submittal, we determined that the other sections of the Part 55 act, such as 324.5506, pertain to the Michigan operating permits program. EPA approved the mechanism for Michigan's title V operating permits program but did not approve its operating permits rules into the SIP because that program has a different approval mechanism under the Clean Air Act. Additionally, section 324.5511(3) references consent orders and the public notice opportunity for those actions. Actions related to consent orders are not being approved into a state's SIP.

On December 19, 2018, Michigan submitted a clarification letter to EPA specifying that it only intended to submit a selection of section 324.5511(3), of the Natural Resources and Environmental Protection Act 451 of 1994 as part of the revision with Michigan rule 205 into the SIP. Michigan rule 205 references the above-mentioned rule 324.5511(3) at R 336.1205(1)(b) citing, ''A draft permit has been subjected to the public participation process specified in section 324.5511(3) of the act.'' EPA is proposing to approve the selection of section 5511(3) into the Michigan SIP as submitted by the state in their December 19, 2018 letter. The selected language as submitted removes references to Michigan's operating permits program and consent order requirements which are not being approved into the SIP, nor are they required to be approved into the SIP. Michigan does not intend to submit a revision to its SIP language pertaining to its title V operating permits program or to actions related to consent orders, but only for New Source Review construction permitting purposes.

EPA requires that major sources and major modifications to major sources subject to the Prevention of Significant Deterioration of air quality and those sources impacting nonattainment areas be subject to public participation requirements, including a public comment period and opportunity for a public hearing. EPA already approved Michigan's major source air permitting program into the Michigan SIP and its associated public participation requirements, found in Michigan rule R 336.2817, on March 25, 2010 (75 FR14352) in accordance with the minimum requirements found in 40 CFR 51.166. Sources subject to Part 19, new source review for major sources impacting nonattainment areas, are required to obtain a permit subject to the permitting provisions of Michigan rules Part 19, which meet the minimum requirements found in 40 CFR 51.165(a) and (b), and rule 201 of the Part 2 air permit rules.

By approving Michigan's rule 205 and section 324.5511(3) of the Michigan act as a revision to the Michigan SIP, the SIP is therefore strengthening the existing state public notice requirements for public participation of air permits. As stated in Michigan's letter, ''These additions will strengthen the Michigan SIP by formalizing the public participation process for all permits issued pursuant to Part 55 and R 336.1201, as well as major source prevention of significant deterioration and nonattainment NSR permits to install.''

Section 324.5511(3), paragraphs (a), (b), and (c) specify the requirements for permit notification and sets the public comment period to at least 30 days with an opportunity for a public hearing with at least a 30-day notice. The current SIP required NSR public participation process provides for only a 21-day public notice and comment period. The Federal permit public participation requirements are only applicable for major source and major modifications in both attainment and nonattainment areas and not the minor source permitting program. Approving the provisions of rule 205 and section 324.5511(3) into the SIP will further strengthen the already approved minor air pollutant construction permitting program by adding a public notice requirement for those sources above 90% of the quantity referenced in the applicable requirements which would constitute a major source or major modification and prescribing the permit emission limitations which will make the synthetic minor air permit practically enforceable. Michigan will continue to exercise its discretion making draft permits available for public comment which are below the 90% quantity in the applicable requirements for a major source or major modification.

III. What action is EPA taking?

EPA is proposing to approve Michigan rule R 336.1205, ''Permit to install; approval'' and portions of section 324.5511(3) of Michigan Act 451 of 1994 into the Michigan SIP.

IV. Incorporation by Reference

In this rule, EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements on 1 CFR 51.5, EPA proposes to incorporate by reference Michigan Administrative Code R 336.1205 Permit to install; approval, effective June 20, 2008. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: March 18, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–05772 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2018–0844; FRL–9989–30]

RIN 2070–AK48

Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA has the authority to apply a suite of regulatory tools to address unreasonable risks from chemical substances, including authority to regulate the distribution in commerce for a particular use and to regulate any manner or method of commercial use, to the extent necessary so that the chemical substance no longer presents unreasonable risk. EPA is issuing an advance notice of proposed rulemaking (ANPRM) to solicit public input on training, certification, and limited access requirements that could address any unreasonable risks that EPA could potentially find to be presented by methylene chloride when used for commercial paint and coating removal. Such a program could allow access to paint and coating removal products containing methylene chloride only to commercial users who are certified as properly trained to engage in use practices that do not present unreasonable risks.

DATES: Comments must be received on or before May 28, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0844, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods (*e.g.,* mail or hand delivery), the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0844, is available at *http://www.regulations.gov.* A public version of the docket is available for inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding federal holidays, at the U.S. Environmental Protection Agency, EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Niva Kramek, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 564–4830; email address: *kramek.niva@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This notice is directed to stakeholders who may be interested in future EPA regulations on methylene chloride for commercial paint and coating removal. This notice may be of interest to entities that are manufacturing or importing or may manufacture or import methylene chloride (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). It also may be of interest to processors, distributors, and users of methylene chloride for commercial paint and coating removal, as well as individuals with expertise in worker training to reduce chemical exposures, people with expertise to certify a level of competence in managing chemical risks, and those that distribute chemicals at retail or business to business sales outlets. Industrial hygienists, health and safety professionals, trade unions, medical professional, occupational health experts, and non-governmental organizations may have interest and expertise.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

If you have any questions regarding the applicability of this notice to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines that a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk. The determination of unreasonable risk is made without consideration of costs or other non-risk factors.

TSCA sections 6(a)(2) and (5) authorize EPA to regulate the distribution in commerce for a particular use and any manner or method of commercial use, respectively, of a chemical found to present unreasonable risk. Potential training, certification, and limited access program requirements could be promulgated under those authorities as part of rulemaking under the authority of TSCA section 6(a).

With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments, for which a completed risk assessment was published prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, TSCA section 26(l)(4) (15 U.S.C. 2625(l)(4)) provides that EPA as a matter of discretion ''may publish proposed and final rules under [TSCA section 6(a)] that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of [TSCA section 6].'' Methylene chloride is such a chemical substance. It is listed in the 2014 update to the TSCA Work Plan and the 2014 final risk assessment includes consumer and commercial uses of paint and coating removal (Refs. 1 and 2).

C. What action is the Agency taking?

EPA is issuing this ANPRM to solicit public input on training, certification, and limited access requirements that could address any unreasonable risks that EPA could potentially find to be presented by methylene chloride in commercial paint and coating removal. Such a program could allow access to paint and coating removal products containing methylene chloride only to commercial users who are certified as properly trained to engage in use practices that ensure that the chemical use does not present any such unreasonable risks.

D. Why is the Agency taking this action?

EPA is taking this action to receive public input on the development of training, certification, and limited access requirements that could address any unreasonable risks that EPA could potentially find to be presented by methylene chloride in commercial paint and coating removal under TSCA section 6(a).

For methylene chloride in consumer paint and coating removal, EPA separately has made a final determination of unreasonable risk and has issued a final rule under TSCA section 6(a) to address those unreasonable risks, elsewhere in this issue of the **Federal Register**. For commercial paint and coating removal uses of methylene chloride, EPA has not finalized the proposed determination of unreasonable risk which published in the **Federal Register** of January 19, 2017 (82 FR 7464) (FRL–9958–57). EPA continues to explore regulatory options that could address any commercial uses of methylene chloride in paint and coating removal that EPA could potentially find to present unreasonable risks. EPA would finalize any determination of unreasonable risk as part of a final regulation.

II. Background

A. Context of This ANPRM

In 2017, EPA issued a proposed rule on methylene chloride in paint and coating removal uses (82 FR 7464, January 19, 2017) (FRL–9958–57). EPA received public comments indicating interest in a potential training, certification, and limited access program to address unreasonable risks for commercial uses of methylene chloride. Those and other comments received, as well as EPA's proposed and final rule and supporting materials, including the report of a Small Business Advocacy Review (SBAR) Panel, are in Docket Number EPA–HQ–OPPT–2016–0231.

Specifically, when developing the proposed rule, EPA engaged in discussions with experts on and users of paint removers (Ref. 3) and conducted formal consultations (82 FR 7525). For example, EPA is required by the Regulatory Flexibility Act to convene an SBAR Panel and seek information and advice from Small Entity Representatives (SERs), who are individuals that represent small entities likely to be subject to any final regulations. During the SBAR Panel for EPA's planned proposed rule for Methylene Chloride and N-Methylpyrrolidone (NMP) in Paint Removers, a SER recommended that EPA consider and seek public comment on a training and certification program similar to the Lead Renovation, Repair and Painting (RRP) rule. Specifically, the comments from SERs during the pre-panel meeting on March 17, 2016, and the oral and written comments during the panel meeting on June 15, 2016, include: (1) A suggestion from a commercial user that in the absence of a ban on methylene chloride, EPA consider limiting the sale of methylene chloride to paint stores or to licensed painters; (2) support from a commercial furniture refinisher for a regulatory option that would restrict methylene chloride use to trained and licensed users while making the product unavailable to consumers; (3) the description from a commercial painter of how some states handle licensing for paint contractors. The SER stated that ''licensing could be similar to the Lead RRP rule. The licensing process [sic] annually could be somewhat costly (*e.g.,* $400–$500), which could possibly keep the average homeowner at bay'' (Ref. 4).

The proposed rule described a training and certification program similar to the lead-based paint RRP

program to reduce proposed unreasonable risks from methylene chloride in paint and coating removal as a regulatory option receiving limited evaluation. EPA asked for comments on this type of program. EPA received one comment in response (from the Environmental Defense Fund), which indicated strong opposition to the proposal due to the challenges the commenter cited with EPA's implementation of the RRP rule and the higher costs of a training and certification program than the proposed option that prohibited most manufacture, processing, distribution, and commercial use of methylene chloride for paint and coating removal (Ref. 5).

In a related comment on the proposed rule, the Department of Defense said that EPA should adopt for methylene chloride a risk management approach similar to the second co-proposed regulatory option for another chemical used in paint and coating removal, N-methylpyrrolidone (NMP), which, among other requirements, would have required use of adequate personal protective equipment and hazard communication for commercial users, so that the chemical would be removed from general consumer use yet preserved for commercial and industrial uses where there are no technically feasible substitutes and where workers can be protected using updated, properly adopted industrial hygiene standards (Ref. 6).

Given these comments and information provided by the public, EPA is interested in soliciting additional public input, through this ANPRM, for a program for training, certification, and limited access for methylene chloride for commercial paint and coating removal.

Furniture refinishing with methylene chloride is an example of one of these uses. In the proposed rule, EPA preliminarily identified unreasonable risks from exposures during furniture refinishing with methylene chloride but did not propose restrictions on this use; instead, EPA was interested in gathering additional information on this use of methylene chloride, including the availability of substitutes. To this end, EPA, in collaboration with the Small Business Administration's (SBA) Office of Advocacy, conducted a workshop on furniture refinishing in Boston, MA on September 12, 2017 (82 FR 41256) (FRL–9966–83). A transcript of the meeting and speaker presentations are available in Docket Number EPA–HQ–OPPT–2017–0139. Some commenters and workshop participants supported a prohibition on methylene chloride in commercial furniture refinishing in the interest of protecting the health of workers, while others opposed such a restriction, stating that a prohibition on methylene chloride would severely affect their ability to do business in this sector.

Following the close of the comment period for the proposed rule, in May 2018, the Halogenated Solvents Industry Alliance, a trade association that represents several formulators of paint and coating removal products containing methylene chloride, submitted a White Paper through SBA to EPA. The White Paper includes a discussion of training and certification for methylene chloride in paint and coating removal, and encourages EPA to adopt a training, certification, and limited access program for methylene chloride in paint and coating removal similar to that enacted in the United Kingdom, which is discussed in more detail in Unit II.B (Ref. 7).

B. Other Training, Certification, and Limited Access Programs

EPA has some experience with programs that require training, certification, or restricted access to chemicals. EPA has also identified additional regulatory or voluntary programs that members of the public may find useful to consider as examples when preparing their comments.

1. *Restricted Use Pesticides under FIFRA.* Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), some pesticides are categorized as restricted use pesticides (RUPs). RUPs are not available for purchase or use by the general public. The classification restricts a product, or its uses, to use by a certified applicator or someone under the certified applicator's direct supervision. Federal law requires any person who uses or supervises the use of RUPs to be certified in accordance with EPA regulations and state, territorial and tribal laws. There are 14 federal categories of certification (40 CFR 171.101). EPA authorizes states, territories, Tribes, and federal agencies to certify applicators. Applicators must be recertified periodically to maintain certification. This is generally accomplished through continuing education courses every three to five years. Training is primarily conducted by university extension services as well as by associations, industry, non-profit organizations, private companies, and federal and state government agencies. RUPs may only be purchased by certified applicators or persons purchasing for use by a certified applicator; dealers must maintain records of each RUP sale, including the identity of the buyer, the licensure of the certified applicator, and the identity and quantity of the RUP product sold. Regulation and enforcement related to RUPs is primarily by states, territories, and tribes, whose certification plans must meet EPA's standards, though they may have differing regulations regarding certification, use, and dealer registration. EPA's role is to establish minimum standards of competency for pesticide applicators that apply or supervise the use of RUPs; provide oversight of state, territory, Tribal and federal agency certification programs to ensure they meet certain standards; and to manage the risks of RUPs through mandatory label use directions and precautions established through registration and reregistration processes (Ref. 8).

2. *Refrigerants Certification under the Clean Air Act.* EPA regulations under sections 608 and 609 of the Clean Air Act restrict the purchase of refrigerants to individuals with certifications (or their employees, in certain circumstances); these refrigerants are sold only through refrigerant distributors and wholesalers (with some exceptions for automotive equipment). Distributors must maintain records of sales. If certain requirements are met, small volumes of automotive refrigerants can be directly sold to consumers. Generally, EPA requires that anyone who maintains, services, repairs, or disposes of refrigeration and air conditioning equipment in a manner that could release refrigerants into the atmosphere must be a certified technician. Training is by third parties that are certified by EPA, and technicians are required to pass an EPA-issued test. The tests are specific to the type of equipment the technician seeks to work on. Tests must be administered by an EPA-approved certifying organization. There are four types of certifications under section 608 (by type of appliance). EPA's role is to provide exam questions and to certify technician certification programs. EPA does not maintain a database of certified technicians; instead, certification (in the form of physical cards) are provided by the certification provider, who maintains records of technicians' certification (40 CFR 82.161).

There is also a separate technician certification program for anyone who services motor vehicle air conditioning for consideration. EPA requires training of technicians under section 609 by third parties that are certified by EPA. EPA reviews and approves the training materials. There is an exemption for consumer do-it-yourself servicing of motor vehicle air conditioning that does

not exist for servicing of stationary refrigeration and air conditioning equipment (40 CFR 82.161).

3. *Lead-Based Paint Renovation, Repair and Painting (RRP) and Abatement Programs.* EPA has extensive understanding of certification and training requirements from implementing the Residential Lead-based Paint Hazard Reduction Act. Specifically, the Lead Renovation Repair, and Painting Rule requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized state or Tribe), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. Training is by third parties who are accredited by EPA or by the state (in 14 states) or one Tribe. EPA or an authorized state or Tribe provides certification to firms or individuals who have completed the training course accredited by EPA or an EPA authorized program. Both trainers and renovators must be certified. Likewise, EPA's Lead Abatement Program regulations establish training and certification requirements for individuals and firms that provide lead-based paint inspection, risk assessment, project design, and abatement services in homes, child care facilities and pre-schools built before 1978. Training for this program is also provided by third parties that have been accredited by EPA or one of the 44 authorized programs in 39 states, 3 Tribes, Puerto Rico, or the District of Columbia (40 CFR 745 and 73 FR 21692, April 22, 2008).

4. *Asbestos Certification Program.* In addition, under the Asbestos Hazard Emergency Response Act, EPA has established a training and accreditation program for asbestos professionals who conduct asbestos inspections or who design or conduct asbestos response actions at schools and public and commercial buildings. Most states are authorized to administer these requirements (40 CFR 763.80).

5. *European Restriction.* A training, certification, and limited access program for methylene chloride is already in place outside the United States. In the European Union, the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) restricts the sale and professional use of methylene chloride in paint and coating removal. Under the conditions of the REACH restriction, distribution to consumers is prohibited, but member states may allow professionals to use paint strippers and allow methylene chloride-containing paint strippers to be placed on the market for use by those professionals, provided that the member state establishes appropriate provisions for the protection of the health and safety of those professionals, including a certification to demonstrate proper training and competence to safely use paint strippers containing methylene chloride. REACH also requires that the training must cover, at a minimum: (a) Awareness, evaluation and management of risks to health, including information on existing substitutes or processes, which, under their conditions of use, would be less hazardous to the health and safety of workers; (b) use of adequate ventilation; and (c) use of appropriate personal protective equipment that complies with other regulations (Ref. 9).

6. *United Kingdom Certification Program.* In the United Kingdom, methylene chloride is regulated through various European Union and UK regulations, including REACH; EU Classification, Labelling and Packaging Regulations; the UK REACH Enforcement Regulations; and other UK regulations covering workers. The United Kingdom decided to allow use of methylene chloride by professionals primarily to avoid hazards created when renovating surfaces with lead-based paint. Currently the United Kingdom's certification program is the only known training program that exists in the European Union as a derogation to the REACH restriction on methylene chloride in paint and coating removal. The Health and Safety Executive has a program that restricts use of methylene chloride for paint and coating removal to trained professionals. To purchase methylene chloride, professionals must pay a fee to a third-party training provider and take a four-hour course on safe use practices. After the training, the person must pass an examination to demonstrate competency, and obtain certification. Trained professionals can then purchase the product at specialty trade outlets and must demonstrate that they have obtained certification. Internet sales must also confirm that the purchaser has a certification. The UK government maintains a data base of professionals with a unique identifying number that provides proof of meeting the certification requirements. The program originated in 2016, and, to date, approximately 500 professionals have applied for certification. Consumer use of methylene chloride-containing paint strippers is not permitted in the United Kingdom (Ref. 10).

7. *Methylene Chloride Standard.* The Occupational Safety and Health Administration (OSHA) requires employers to protect employees from occupational exposure to methylene chloride. OSHA's methylene chloride standard specifies the permissible exposure limits for methylene chloride and also includes provisions for, among other things, exposure monitoring, engineering controls, work practice controls, medical surveillance, respiratory protection, hazard communication, employee training, personal protective equipment, and recordkeeping (29 CFR 1910.1052).

The OSHA methylene chloride standard requires, among other information and training requirements, that the employer train affected employees as required under OSHA's hazard communication standard (29 CFR 1910.1200, 29 CFR 1915.1200, or 29 CFR 1926.59, as appropriate). The training requirements of the hazard communication standard include at least: The methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area; the hazards of the chemicals in the work area; the measures employees can take to protect themselves from these hazards, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and the details of the hazard communication program developed by the employer, including, among other things, the safety data sheet.

The OSHA methylene chloride standard also contains, among other information and training requirements, provisions that are triggered only when an employee's exposure exceeds or can reasonably be expected to exceed the standard's ''action level'' of 12.5 parts per million (ppm) calculated as an eight (8)-hour time-weighted average (TWA). In such cases, for example, the employer must inform each affected employee of the quantity, location, manner of use, release, and storage of methylene chloride and the specific operations in the workplace that could result in exposure to methylene chloride, particularly noting where exposures may be above the standard's permissible exposure limits.

OSHA's methylene chloride standard's respiratory protection provisions require respirator use during periods when an employee's exposure to airborne concentrations of methylene chloride exceeds the standard's permissible exposure limits and at other times specified in the standard. The standard also requires employers to implement a respiratory protection program in accordance with paragraph (b) through (m) (except paragraph (d)(1)(iii)) of OSHA's respiratory

protection standard, which covers each employee required by the standard to use a respirator. The respiratory protection standard specifies that: The employer must develop and implement a written respiratory protection program with required worksite-specific procedures and elements; the program requirements must be administered by a suitably-trained program administrator; and the program must include provisions for employee training, as well as respirator selection, fit testing, medical evaluation, respirator use, and respirator cleaning, maintenance, repair, and other provisions. The respirator standard also requires that employers ensure that employees required to use respirators be trained and able to demonstrate knowledge central to the safe use of respirators, including, for example, knowledge on why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator.

The OSHA standards also contain requirements on the timing and frequency of training (*e.g.,* initial training, retraining, etc.). Please consult OSHA's methylene chloride, hazard communication, and respiratory protection standards for additional requirements (including additional information and training requirements) contained in those standards.

III. Training, Certification, and Limited Access for Methylene Chloride

One regulatory approach EPA is considering is a regulation that could limit access to methylene chloride for commercial paint and coating removal by only allowing use by those individuals who have certified that they are able to engage in safe work practices such that any unreasonable risk is not present. EPA acknowledges that other, more restrictive regulatory approaches may be appropriate for some conditions of use of methylene chloride for which EPA determines unreasonable risk is present. Several considerations related to commercial uses of methylene chloride for paint and coating removal suggest that regulations allowing for limited access to the chemical, rather than a full prohibition on distribution for all commercial paint and coating removal, could be effective at addressing any unreasonable risks that EPA could potentially find to be present while allowing continued use. For example, workplaces that have robust environment, safety and health protection programs and are in compliance with OSHA's methylene chloride standard (which contains requirements for the use of engineering controls, personal protective equipment, training, and other requirements to protect employees from methylene chloride exposure) are likely to address any risks EPA could potentially find to be present from exposure to methylene chloride during commercial paint and coating removal so that they are no longer unreasonable. EPA notes that because more than 90 percent of methylene chloride manufactured (including imported) in the U.S. is estimated to be used for purposes other than paint and coating removal, employers and employees in those sectors may have considerable experience in work practices or other controls that could be transferred to paint and coating removal processes (Ref. 11).

While all comments regarding any aspect of a training, certification, and limited access program for methylene chloride for commercial paint and coating removal are welcome, comments on the following key areas are requested.

1. Is a training, certification, and limited access program an appropriate method for reducing any unreasonable risks that EPA could potentially find to be presented by commercial paint and coating removal with methylene chloride?

2. Would such a program address any such unreasonable risks such that those risks are no longer unreasonable?

3. What metrics should EPA consider using as part of measuring the effectiveness of a training, certification, and limited access program for methylene chloride for commercial paint and coating removal? What types of measurements or indicators could EPA use to evaluate how a training, certification, and limited access program addresses any unreasonable risk?

4. Would a training, certification, and limited access program allow some commercial paint and coating removal with methylene chloride to continue? Would the program create barriers to use such that most commercial operations would choose not to use methylene chloride for paint and coating removal in favor of less restricted alternatives?

5. Do commercial users of methylene chloride for purposes other than paint and coating removal have experience with work practices, controls, training, or other topics that EPA should consider?

6. Should EPA consider requirements other than a training, certification, and limited access program for commercial uses of methylene chloride in paint and coating removal?

A. Training

Training for safe work practices could be part of the requirements needed to obtain a certification of ability to engage in safe work practices for commercial paint and coating removal with methylene chloride. The training required could include training on: How to handle, use, and dispose of methylene chloride for paint and coating removal so that any unreasonable risks EPA could potentially find to be present are not present; proper use of engineering controls and personal protective equipment; accident prevention; emergency response; preparing and maintaining proper records; the hazards associated with use of methylene chloride for paint and coating removal; the route(s) of worker exposure; methods of detecting the presence of methylene chloride; symptoms of overexposure; medical treatment for overexposure; and explanation of Safety Data Sheets and labeling requirements. EPA could also require that the training be tailored to describe measures that address specific exposure scenarios for methylene chloride for paint and coating removal, such as those scenarios that have resulted in fatalities.

While all comments regarding any aspect of training for safe work practices regarding methylene chloride for commercial paint and coating removal are welcome, comments on the following key areas are requested.

1. Who should receive training? Individual commercial users, employers, or both?

2. Who should provide training? What should EPA's role be? Training providers could be EPA or a third party, including states, manufacturers, trade associations, or others.

3. What topics should the training include?

4. Should EPA accredit training providers? Should EPA accept state, Tribal, or territorial accreditation of training providers?

5. How should the training be delivered?

6. How long should the training be?

7. Should periodic refresher training or updates be required?

8. Should there be a fee for training and/or for accreditation of training providers? If so, what would be an appropriate fee?

9. Can training for commercial use of methylene chloride in paint and coating removal be combined with training on another topic, such as a chemical with similar risks or properties? Could training on methylene chloride be part of a larger training for a particular

industry sector (such as certification in automotive repair)?

10. Should there be different training for distributors, workers, and employers? What should be the training for self-employed commercial users, or for users who may also be employee-owners?

11. As discussed in detail earlier in this Notice, OSHA requires employers to protect employees from occupational exposure to methylene chloride. What experiences do employers or employees have complying with OSHA's regulatory scheme or the regulatory scheme of an OSHA-approved State Plan? How should any training requirements EPA develops complement and/or supplement OSHA's regulatory scheme?

12. Are there any examples of training programs that would be suitable for commercial use of methylene chloride in paint and coating removal?

13. What are the metrics for evaluating whether or not training is successful in educating the commercial user on risks of methylene chloride in paint and coating removal, and how to reduce exposures so that those risks are addressed?

14. Should there be a mandatory period of apprenticeship allowing for monitoring and observation after the training where the employer and/or management could interject if safe work practices are not properly adhered to?

15. How can training address the needs of diverse work scenarios and commercial users with various levels of experience with methylene chloride and safe work practices?

16. How could training ensure that workers in facilities where methylene chloride is used for paint and coating removal but who are not directly engaged in that activity are not subject to any unreasonable risks EPA could potentially find to be present?

17. What would be required for successful completion of training?

18. Are there existing best practices in training, certification, or accreditation programs from states, industry, or other stakeholders EPA should consider?

19. What types of commercial uses of methylene chloride might be good or poor candidates for a training, certification, and limited access program?

20. How should EPA involve stakeholders in the development of content for training, certification and limited access programs?

B. Certification

This component of the program could mandate that commercial users be certified as able to engage in safe work practices with methylene chloride for paint and coating removal. In the context of this ANPRM, certification could provide documentation to EPA, distributors, and, potentially, interested members of the public that an individual is able to engage in safe work practices with methylene chloride for commercial paint and coating removal. To the extent knowledge of other pertinent Federal or state requirements (*e.g.,* OSHA occupational health standard for methylene chloride) is considered an integral component of the ability to engage in safe work practices, attesting to such knowledge may be a prerequisite to or a part of obtaining certification.

While all comments regarding any aspect of certification of ability to engage in safe work practices regarding methylene chloride for commercial paint and coating removal are welcome, comments on the following key areas are requested.

1. How can commercial users demonstrate to EPA that they will be engaging in commercial paint and coating removal (rather than personal use or consumer paint and coating removal)?

2. Who should be certified? Individual commercial users, workplaces/firms, or both?

3. Who should be the certifying body? What should EPA's role be?

4. What requirements for certification would be most effective for commercial users to demonstrate that they can engage in safe work practices for paint and coating removal with methylene chloride?

5. Should certification be awarded upon completion of training? What type of training programs would be acceptable for earning certification? Would they need to provide specific information on methylene chloride, or would general safe handling and use of volatile chemicals be sufficient? How would interested commercial users know which training programs would allow them to earn the certification?

6. If certification was awarded at the completion of training, should a test be required? If so, what kind (*e.g.,* knowledge tests, practical demonstrations, or other types of exams)? Who should develop the exam: EPA or third parties? Should EPA develop a program for, separately, certifying testing bodies?

7. Should certification be earned based on other criteria, such as evidence of exposure reduction equipment or practices already in place? If so, what documentation would be suitable? How recent would such documentation need to be? If such certification included documentation of a business relationship or contract with a workplace safety consultant, what type of credential or licensing would that consultant be required to have?

8. Should certification be earned based on development of a workplace plan for exposure reduction, similar to the requirements of the National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (73 FR 1737, January 9, 2008)? Under those regulations, commercial users are required to notify EPA (or a delegated State authority) that they have developed a management plan but are not required to submit the plan to EPA. Instead, they must ''keep a written copy of the plan on site and post a placard or sign outlining the evaluation criteria and management techniques'' (73 FR 1742). Should similar criteria be required for certification of ability to engage in safe work practices for methylene chloride for paint and coating removal?

9. Should certification be earned in connection with a separate but related credential or license? Should certification be linked to other expertise, such as credentials or licensing by third parties in chemical safety, occupational or industrial health and safety, or other relevant area of expertise? If so, what specific credential or licenses should EPA consider? How could EPA verify that those third-party credentials or licenses are in good standing? Similarly, should an entity other than EPA provide certification of ability to engage in safe work practices with methylene chloride for paint and coating removal?

10. What information should be provided by an individual or employer who is seeking certification? Should EPA require personal information such as name and phone number, employment information such as name and address of employer? Should EPA require confirmation of status as a commercial user? If so, what documentation should be provided?

11. Should individuals or employers seeking certification be required to submit a statement that they are able to engage in safe work practices with methylene chloride for commercial paint and coating removal?

12. What kind of records should be required for certification? How long should records be kept by either individual commercial users or employers?

13. EPA places particular emphasis on the public health and environmental conditions affecting minority populations, low-income populations, and indigenous peoples. Additionally,

under TSCA, EPA is required to consider risks to susceptible subpopulations such as workers. How could EPA ensure that any requirements for certification are clearly communicated to all potential certified commercial users, and that all workers are able to engage in safe work practices for methylene chloride in paint and coating removal?

14. Should existing standards for the development of certification programs be considered? If so, should they be voluntary or required? Specifically, ASTM E2659–018 is a standard for developing and administering a quality certificate program. The standard includes requirements for the both certifying entity and for the certificate program for which it issues certificates. Because ASTM–E2659–18 does not address guidance pertaining to certification of individuals, ISO/IEC 17024: 2012 would be used to develop and maintain a certification program for individuals; certification could demonstrate competency and the ability to use methylene chloride for paint and coating removal properly.

15. How can commercial users in industry sectors that are prohibited from using methylene chloride in paint and coating removal be identified if they attempt to obtain certification?

16. Should EPA or a third party have a centralized database of certified commercial users? If so, what information should be available internally (to EPA and other authorized regulatory entities) and externally (for distributors and other members of the public)?

17. How could EPA best balance the protection of certified commercial users' personal information with the need for distributors to access some of that information? Should access to such a database be limited to EPA and authorized, or permitted, distributors? How could EPA ensure that individuals with the same or similar personal details (such as name or business address) can be distinguished in the database?

18. If EPA should not have a centralized database of certified commercial users, where should the record of certification be maintained? How should distributors access and verify that certification?

19. Should certified commercial users also receive an identification card or physical credential? If so, what elements would users find useful for demonstrating that a physical credential was legitimate? How could such a credential be replaced if lost?

20. Should EPA propose to allow methylene chloride for commercial paint and coating removal under the supervision of a certified commercial user?

21. What if a certified user changes employers? Would a new certification be required? Should users be required to update information on employment?

22. Under what circumstances should EPA rescind certification?

23. Should certification include a fee? If so, what would be an appropriate fee?

24. Should certification expire? Would requirements for renewal be different from initial certification requirements? How frequently should certifications be renewed, if ever?

C. Limited Access to Methylene Chloride

This component of the program could limit the sale of methylene chloride for paint and coating removal. This could allow for continued access and use of methylene chloride for specific paint and coating removal uses by certified commercial users or trained individuals while preventing access to methylene chloride-containing paint and coating removers by non-certified commercial users.

While all comments regarding any aspect of a program to provide for limited access to methylene chloride for commercial paint and coating removal to certified commercial users are welcome, comments on the following key areas are requested.

1. Should there be restrictions on how methylene chloride for paint and coating removal is distributed? Should certain types of distributors be prohibited from distribution of methylene chloride for paint and coating removal?

2. How should distributors verify that a prospective purchaser (individual or commercial entity) is certified? Should there be an online database or examination of physical credential or both? Are there other methods, or combination of methods, that EPA should consider?

3. How can distributors identify commercial users? Should they be required to do so?

4. How could distributors identify whether the identity of the prospective purchaser matched the commercial user to which certification was awarded? Should distributors be required to check government-issued photo ID or verify identify in another way? Should distributors develop their own protocols?

5. How could e-commerce sales be subject to a limited access program? For example, how at the point of sale and/or at the point of delivery can certification status of the purchaser be verified? How could online purchasers demonstrate that they were certified to purchase the product, and confirm their identity?

6. A key component of a program that limits access to methylene chloride would be how, at the point of sale, a distributor would verify that a prospective purchaser is a certified commercial user of methylene chloride for paint and coating removal. Should EPA detail specific requirements for how the distributor checks those certifications, trains any staff that sells the products, or maintains records? Should distributors be responsible for developing protocols that would be sufficient to limit access only to certified commercial users?

7. What costs do distributors estimate they would incur under a limited access program? Specifically, what would be the costs for: Equipment needed to physically restrict access to the chemical products; equipment and staff time for verifying certification and identity of the commercial user purchasing the product; training and staff time to understand the required procedures; and generating and maintaining records?

8. Should a permit for distributors be required? If so, what should the cost be? What requirements would need to be met for issuance of a distribution permit? Should permits be required to be renewed?

9. What records should be maintained? These could include records that document how certification was verified for each purchaser of methylene chloride for paint and coating removal, how the distributor ensures that only individuals with certification are able to access methylene chloride for paint and coating removal; and details of sales of the chemical for paint and coating removal, including the name and certification identifier of each purchaser of methylene chloride, and the quantity of the chemical product sold. How long should such records be maintained?

10. To what extent, if any, should additional parties—such as states, academia, or trade associations—be involved in a limited access program development or implementation?

11. What might the effects of a limited access program be on a small business?

12. Should a potential future online database of certified commercial users be incorporated into existing EPA databases (such as those under CDX), or should it be a stand-alone, sole-purpose database?

13. What experiences do manufacturers, processors, or distributors have with sales of methylene chloride for paint and

coating removal to professional users in the UK, given the requirements for limited access that are in place there?

IV. Request for Comment and Additional Information

EPA is seeking comment on all information outlined in this ANPRM and any other information, which may not be included in this notice, but which you believe is important for EPA to consider.

EPA specifically invites public comment and any additional information in response to the questions and issues identified in Unit III. Instructions for providing written comments are provided under **ADDRESSES**, including how to submit any comments that contain CBI. No one is obliged to respond to these questions, and anyone may submit any information and/or comments in response to this request, whether or not it responds to every question in this notice.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Work Plan Chemicals. *http://www.epa.gov/sites/production/files/2014-02/documents/work_plan_chemicals_web_final.pdf.* Retrieved February 25, 2016.
2. EPA. TSCA Work Plan Chemical Risk Assessment Methylene Chloride: Paint Stripping Use. CASRN 75–09–2. EPA Document# 740–R1–4003. August 2014. Office of Chemical Safety and Pollution Prevention. Washington, DC. *https://www.epa.gov/sites/production/files/2015-09/documents/dcm_opptworkplanra_final.pdf.*
3. EPA. Summary of Stakeholder Engagement, Proposed Rule Under TSCA § 6 Methylene Chloride and NMP in Paint and Coating Removal. 2016.
4. EPA. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on the Toxic Substances Control Act (TSCA) Section 6(a) as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act for Methylene Chloride and N-Methylpyrrolidone (NMP) in Paint Removers. Office of Chemical Safety and Pollution Prevention. Washington, DC. 2016.
5. Public Comment. Comments submitted by Lindsay McCormick, Chemicals and Health Project Manager, on behalf of Environmental Defense Fund. EPA–HQ–OPPT–2016–0231–0912.
6. Public Comment. DoD Comments on MeCl and NMP 19 Jan 17 Notice of Proposed Rulemaking Methylene Chloride and N-Methylpyrrolidone; Rulemaking under TSCA Section 6(a). EPA–HQ–OPPT–2016–0231–0519.
7. Halogenated Solvents Industry Alliance. Responsibly Regulating Methylene Chloride in Paint Removal Products: an Alternative Approach to Flawed Proposal Published by EPA on January 19, 2017.
8. EPA. How to Get Certified as a Pesticide Applicator. *https://www.epa.gov/pesticide-worker-safety/how-get-certified-pesticide-applicator.* Accessed December 18, 2018.
9. REACH Restriction. Annex XVII to REACH—Conditions of restriction. Entry 59 Dichloromethane containing Paint Strippers. *https://echa.europa.eu/documents/10162/0ea58491-bb76-4a47-b1d2-36faa1e0f290* (Accessed December 18, 2018).
10. *The Reach Enforcement (Amendment) Regulations* 2014 (SI 2014/2882). *http://www.legislation.gov.uk/uksi/2014/2882/made.*
11. EPA. Economic Analysis of Final Rule TSCA Section 6 Action on Methylene Chloride in Paint and Coating Removal (EPA Docket EPA–HQ–OPPT–2016–0231; RIN 2070–AK07). Office of Pollution Prevention and Toxics. Washington, DC.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

Since this document does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various other review requirements that apply when an agency imposes requirements do not apply to this action. Nevertheless, as part of your comments on this document, you may include any comments or information that you have regarding the various other review requirements.

In particular, EPA is interested in any information that could help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note); to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or to consider human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

The Agency will consider such comments during the development of any subsequent proposed rule as it takes appropriate steps to address any applicable requirements.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Methylene chloride, Recordkeeping.

Dated: March 15, 2019.

Andrew Wheeler,

Administrator.

[FR Doc. 2019–05865 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

National Vaccine Injury Compensation Program: Statement of Reasons for Not Conducting Rulemaking Proceedings

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Denial of petition for rulemaking.

SUMMARY: In accordance with the Public Health Service Act, notice is hereby given concerning the reasons for not conducting rulemaking proceedings to add autism, asthma, and tics as injuries associated with vaccines to the Vaccine Injury Table (Table). Also, this document provides reasons for not conducting rulemaking proceedings to add Pediatric Infection-Triggered, Autoimmune Neuropsychiatric Disorder (PITAND) and/or Pediatric Autoimmune Neuropsychiatric Syndrome (PANS); Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections (PANDAS) as injuries associated with pertussis, pneumococcal conjugate and Haemophilus influenza type b vaccines; and Experimental Autoimmune Encephalomyelitis/Acute Demyelinating

Encephalomyelitis as injuries associated with pertussis vaccines to the Table.

DATES: Written comments are not being solicited.

FOR FURTHER INFORMATION CONTACT: Dr. Narayan Nair, MD, Director, Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8N146B, Rockville, Maryland 20857, or by telephone at 800–338–2382 or by email: *VaccineCompensation@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (the Vaccine Act), Title III of Public Law 99–660, as amended (42 U.S.C. 300aa–10 *et seq.*) established the National Vaccine Injury Compensation Program (VICP) for persons thought to be injured by vaccines. Under this Federal program, petitions for compensation are filed with the United States Court of Federal Claims (Court). The Court, acting through special masters, makes findings as to eligibility for, and amount of, compensation. To gain entitlement to compensation under the VICP for a covered vaccine, a petitioner must establish a vaccine-related injury or death in one of the following ways (unless another cause is found): (1) By proving that the first symptom of an injury or condition, as defined by the Qualifications and Aids to Interpretation, occurred within the time period listed on the Vaccine Injury Table (Table), and, therefore, is presumed to be caused by a vaccine; (2) by proving vaccine causation, if the injury or condition is not on the Table or did not occur within the time period specified on the Table; or (3) by proving that the vaccine significantly aggravated a pre-existing condition.

The Vaccine Act provides for the inclusion of additional vaccines in the VICP when they are recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children and/or pregnant women. See section 2114(e)(2) and (3) of the PHS Act, 42 U.S.C. 300aa–14(e)(2) and (3). Consistent with section 13632(a)(3) of Public Law 103–66, the regulations governing the VICP provide that such vaccines will be included in the Table as of the effective date of an excise tax to provide funds for the payment of compensation with respect to such vaccines, 42 CFR 100.3(c)(8). The statute establishing the VICP also authorizes the Secretary to create and modify a list of injuries, disabilities, illnesses, conditions, and deaths (and their associated time frames) associated with each category of vaccines included on the Table. See sections 2114(c) and 2114(e)(2) and (3) of the PHS Act, 42 U.S.C. 300aa–14(c) and 300aa–14(e)(2) and (3). Finally, section 2114(c)(2) of the PHS Act, 42 U.S.C. 300aa–14(c)(2) provides that any person, including the Advisory Commission on Childhood Vaccines (the Commission) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following receipt of any recommendation of the Commission or 180 days after the date of the referral to the Commission, whichever occurs first, the Secretary shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the **Federal Register** a statement or reasons for not conducting such proceeding.

During 2017, private citizens submitted documents to HHS and the Advisory Commission on Childhood Vaccines (Commission) requesting that certain injuries be added to the Table. These documents are considered petitions to the Secretary of HHS to propose regulations to amend the Table to add these injuries associated with vaccines on the Table. Below are summaries of these petitions.

- On April 3, 2017, a private citizen sent an email requesting to add food allergies, asthma and autism as injuries to the Table. The citizen did not specify vaccines associated with these alleged injuries in the petition.
- Letters dated March 16, 2017, and May 4, 2017, sent from a second private citizen requested to add tics as an injury to the Table. The citizen did not specify the vaccine associated with this alleged injury in the petition.
- Two letters dated February 20, 2017, and March 20, 2017, from a third private citizen, requested that the following be added to the Table: Pediatric Infection-Triggered Autoimmune Neuropsychiatric Disorder (PITAND) and/or Pediatric Autoimmune Neuropsychiatric Syndrome (PANS), and Pediatric Autoimmune Neuropsychiatric Disorders Associated with Group A Streptococcal Infections (PANDAS) as injuries associated with pertussis, pneumococcal conjugate, and Haemophilus influenza type b (Hib) vaccines; and Experimental Autoimmune Encephalomyelitis (EAE)/Acute Demyelinating Encephalomyelitis (ADEM) as injuries associated with pertussis vaccines.

Pursuant to the VICP statute, these petitions were referred to the Commission on December 8, 2017. The Commission voted unanimously to recommend that the Secretary not proceed with rulemaking to amend the Table as requested in the petition to add asthma to the Table. The Commission voted 4–1 to recommend that the Secretary not proceed with rulemaking to amend the Table as requested in the other petitions. A petition to add food allergies to the Table was discussed at a previous ACCV meeting and the Commission recommended not to add this injury to the Table at that time. On March 29, 2016, the Secretary of HHS published a **Federal Register** notice stating reasons for not conducting rulemaking proceedings to add food allergies as an injury associated with vaccines to the Table.[1]

Autism and Asthma

On April 3, 2017, a private citizen sent an email requesting to add food allergies, asthma and autism as injuries to the Table. As mentioned above, the petitioner's request to add food allergies to the Table was previously addressed in a **Federal Register** notice published on March 29, 2016 (81 FR 17423–01). The requests to add autism and asthma to the Table are discussed below.

Autism

The National Institute of Child Health and Human Development states that autism or autism spectrum disorder (ASD) refers to a group of complex neurodevelopment disorders characterized by repetitive and characteristic patterns of behavior and difficulties with social communication and interaction. The symptoms are present from early childhood and affect daily functioning.[2] The exact cause of ASD is unknown but it is thought that the environment and genetics both play a role. While no specific environmental factors have been definitively identified as causes of ASD, a number of genes have been identified that are associated with ASD.[3] Numerous scientific studies have found that neither vaccines nor vaccine ingredients cause ASD.[4 5 6]

To support the claim that autism is caused by vaccines, the petitioner

[1] 81 FR 17423 (Mar. 29, 2016); *https://www.gpo.gov/fdsys/pkg/FR-2016-03-29/pdf/2016-06666.pdf.*

[2] National Institutes of Health, *About Autism, https://www.nichd.nih.gov/health/topics/autism/conditioninfo/Pages/default.aspx* (accessed May 3, 2018).

[3] National Institutes of Health, ''Autism Spectrum Disorder Fact Sheet,'' *https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Autism-Spectrum-Disorder-Fact-Sheet#3082* 5 (accessed May 3, 2018).

[4] *https://www.cdc.gov/vaccinesafety/concerns/autism.html.*

[5] *https://www.cdc.gov/ncbddd/autism/research.html.*

[6] *https://effectivehealthcare.ahrq.gov/topics/vaccine-safety/research.*

references a non- peer-reviewed article that he wrote and published online.[7] The article does not describe any epidemiologic evidence that vaccines cause autism but refers to another article authored by the petitioner. This article proposed a theory that milk antigens in vaccines can cause autism. No clinical data are provided to support this theory.

The Court considered and denied claims alleging that vaccines cause autism as part of the Omnibus Autism Proceeding (OAP). Starting in 2001, parents began filing petitions for compensation under the VICP, alleging that certain childhood vaccinations might be causing or contributing to autism. Specifically, they alleged that the measles, mumps, and rubella (MMR) vaccines and thimerosal-containing vaccines can combine to cause autism and that thimerosal-containing vaccines alone can cause autism. The Court created the OAP to adjudicate these claims.

By 2010, over 5,600 cases had been filed, and over 5,000 pending cases were divided among the three presiding special masters. In decisions released in 2009 and 2010, and affirmed without exception on appeal, the Court found there is no credible evidence that the MMR vaccines in combination with thimerosal-containing vaccines, or that thimerosal-containing vaccines alone, cause autism. These decisions mirror the current body of scientific evidence, including the 2001 Institute of Medicine (IOM) report, ''Immunization Safety Review: Thimerosal-Containing Vaccines and Neurodevelopmental Disorders.'' [8]

During 2012, the Institute of Medicine (IOM) published a report, ''Adverse Effects of Vaccines: Evidence and Causality,'' which reviewed the medical and scientific evidence on vaccines and adverse events to update the Table. The IOM committee concluded, ''the evidence favors rejection of a causal relationship between MMR vaccine and autism.'' In addition, since the Court's OAP decisions and the IOM's findings, several studies have also found that vaccines are not associated with autism.[9] [10] [11] Furthermore, a number of professional and international organizations have reviewed the evidence and also concluded that there is no association with vaccines and autism. These organizations include: the American Academy of Pediatrics, American Medical Association, American Academy of Family Physicians, Canadian National Advisory Committee on Immunization, and the Department of Health of the United Kingdom. In summary, current scientific evidence does not support a causal association between vaccinations and autism.

Asthma

Asthma is a chronic inflammatory disorder contributing to hyperresponsive airways, decreased airflow, breathing difficulties (such as wheezing and shortness of breath), and disease chronicity. It is thought that asthma develops in individuals who have a combination of certain host and environmental factors. There are several risk factors for developing asthma, including genetic and prenatal factors, lung size in infancy, exposure to environmental factors (*i.e.,* microbial organisms, smoke, and pollution), viral infections, obesity, and atopy (tendency to produce immunoglobulin E (IgE) antibodies). Individuals who develop allergic-type asthma are usually sensitized, or first develop IgE (Immunoglobulin E) antibodies when they come into contact with an allergen through the respiratory route. When they are re-exposed to the sensitized allergen in their airways, IgE antibodies will react and bind to the specific allergen, causing an allergic reaction.

Viral infections trigger up to 85 percent of asthma exacerbations in school-aged children and up to 50 percent of exacerbations in adults and may also contribute to asthma onset. This is likely mediated by IgE. Factors such as exercise, intense emotions, and cold air, among others, can cause an exacerbation through a non-allergic pathway. Atopy, the genetic predisposition for developing an IgE-mediated response to common allergens, is the strongest identifiable predisposing factor for developing asthma.

The petitioner asserts that the injection of food allergen-contaminated vaccines ''or pathogen associated vaccine antigens'' causes sensitization and subsequently asthma.

To support the theory that vaccines cause asthma, the citizen references a non-peer-reviewed article that he wrote and published online citing 15 references.[12] The individual also provided four additional articles, two of which he wrote and published online without peer review. [13] [14] [15] [16] Three of the latter references did not discuss asthma.

In the article, he asserts that vaccines cause allergy-induced asthma by at least two mechanisms. First, individuals can develop IgE-mediated sensitization by injection of food proteins in vaccines. Second, when they inhale the sensitized food particles, they can suffer asthma symptoms. The petition alleges that individuals can also become sensitized to ''pathogen associated vaccine antigens'' via IgE. Upon inhalation of these particles, such as influenza viral particles and pertussis bacterial particles, they will develop asthma symptoms. He cites 15 articles to support his theory. However, nine of these articles discuss general immunology, atopic dermatitis, food

[7] Vinu Arumugham, ''Medical muddles that maim our children with allergies, asthma and autism,'' *ResearchGate,* February 2017, *https://www.researchgate.net/publication/313918596_Medical_muddles_that_maim_our_children_with_allergies_asthma_and_autism?ev=publicSearchHeader&_sg=BKfNvl584X7Rf80bZHRyAldVr-GGf85U4THDmg_7BrJ72PtrZMkhMKIXZQOWWm9cOPjEJRtLCOeqyCI* (accessed May 3, 2018).

[8] Institute of Medicine (IOM) Report (2001), ''Immunization Safety Review: Thimerosal-Containing Vaccines and Neurodevelopmental Disorders.''

[9] Shahed Iqbal, John P. Barile, William W. Thompson, Frank DeStefano, ''Number of antigens in early childhood vaccines and neuropsychological outcomes at age 7–10 years,'' *Pharmacoepidemiology Drug Safety* 22, no. 12 (2013): 1263–70.

[10] Luke E. Taylor, Amy L. Swerdfeger, Guy D. Eslick, ''Vaccines are not associated with autism: an evidence-based meta-analysis of case-control and cohort studies,'' *Vaccine* 32, no. 29 (2014): 3623–9.

[11] Frank DeStefano, Cristofer S. Price, Eric S. Weintraub, ''Increasing exposure to antibody-stimulating proteins and polysaccharides in vaccines is not associated with risk of autism,'' *The Journal of Pediatrics* 163, no. 2 (2013): 561–567.

[12] Arumugham, ''Medical muddles that maim our children with allergies, asthma and autism.''

[13] Vinu Arumugham, ''Strong protein sequence alignment between autoantigens involved in maternal autoantibody related autism and vaccine antigens,'' *ResearchGate,* May 2017, *https://www.researchgate.net/profile/Vinu_Arumugham/publication/316785758_Strong_protein_sequence_alignment_between_autoantigens_involved_in_maternal_autoantibody_related_autism_and_vaccine_antigens/links/59115a620f7e9bfa06d43d5e/Strong-protein-sequence-alignment-between-autoantigens-involved-in-maternal-autoantibody-related-autism-and-vaccine-antigens.pdf?origin=publication_list* (accessed May 3, 2018).

[14] Vinu Arumugham, ''Significant protein sequence alignment between Saccharomyces Cerevisiae Proteins (a Vaccine Contaminant) and Systemic Lupus Erythematosus Associated Epitopes,'' *ResearchGate,* May 2017, *https://www.google.com/search?q=Significant+protein+sequence+alignment+between+Saccharomyces+Cerevisiae+Proteins+%28a+Vaccin* e+Contaminant%29+and+Systemic+Lupus+Erythematosus+Associated+Epitopes&ie=utf-8&oe=utf-8 (accessed May 3, 2018).

[15] Elizabeth Fox-Edmiston and Judy Van de Water, ''Maternal anti-fetal brain IgG autoantibodies and autism spectrum disorders: current knowledge and its implications for potential therapeutics,'' *CNS Drugs* 29, no. 9 (2015): 715–724.

[16] Maryline Fresquet, Thomas A. Jowitt, Jennet Gummadova, et al., ''Identification of a Major Epitope Recognized by PLA2R Autoantibodies in Primary membranous Nephropathy,'' *Journal of the American Society Nephrology* 26, no. 2 (2015): 302–13.

allergies, and anaphylaxis rather than asthma.[17 18 19 20 21 22 23 24 25]

One study referenced by the citizen found children had IgE anti-pertussis antigens after immunization, but no generalized further increase in IgE to food or inhalant antigens to which they were already sensitive. There was no suggestion that IgE to food or bacterial antigens would be a trigger for asthma and the author concluded, ''modifications of vaccine formulation aimed at preventing IgE production do not seem warranted.'' [26] Another study by Holt et al. found greater increases in IgE in patients immunized with acellular pertussis-containing vaccines compared to those immunized with whole cell pertussis containing vaccines. They suggested that the IgE antibody against those viruses could contribute to the respiratory symptoms during acute infection, but did not discuss the development of chronic asthma.[27] Another study referenced in the citizen's article, Smith-Morowitz et al. found persistence of IgE anti-influenza antibody for 2 years after immunization, suggesting that rather IgE may be associated with protective antibodies.[28]

The citizen also cited a study by Kuno-Sakai et al. This study evaluated whether gelatin in the MMR vaccine caused an acute allergic reaction. MMR, varicella, and some influenza vaccines continue to contain hydrolyzed gelatin, but acute reactions are rare as is the incidence of gelatin allergy in the general population, suggesting that vaccines are not a likely cause of widespread allergy to gelatin. No evidence was provided that inhalation of gelatin causes asthma.[29]

The 2012 IOM report reviewed asthma exacerbation or reactive airway disease episodes in children and adults after inactivated influenza vaccine, and asthma exacerbation/reactive airway disease episodes, in both children younger than 5 years of age and in persons 5 years of age or older after live attenuated influenza vaccine (LAIV). The IOM reached the following conclusions:

- The evidence favors a rejection of a causal relationship between inactivated influenza vaccine and asthma exacerbation or reactive airway disease episodes in children and adults;
- The evidence is inadequate to accept or reject a causal relationship between LAIV and asthma exacerbation or reactive airway disease episodes in children younger than 5 years of age; and
- The evidence is inadequate to accept or reject a causal relationship between LAIV and asthma exacerbation or reactive airway disease episodes in persons 5 years of age or older.

The IOM did not evaluate evidence regarding a causal association between other vaccines and asthma. Aside from influenza vaccines, the IOM does not comment on the strength of the epidemiologic or mechanistic evidence regarding asthma and vaccination. Therefore, the IOM report does not support the petitioner's position for adding asthma to the Table for the influenza vaccine.[30]

In addition to assessing the evidence submitted in the petition, HHS assessed expert reviews pertinent to asthma etiology. During 2007, the National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health published, ''Expert Panel Report 3: Guidelines for the Diagnosis and Management of Asthma: Clinical Practice Guidelines.'' A panel consisting of 18 experts commissioned by the National Asthma Education and Prevention Program Coordinating Committee and coordinated by the NHLBI developed this report. It discusses the causes of asthma, but vaccines are not considered as a potential cause.[31] Additional expert reviews on the etiology of asthma published in the literature do not mention vaccines as a risk factor or potential risk factor.[32 33 34 35]

In addition to considering submitted evidence, HHS conducted a literature search of major medical databases for any articles linking vaccination and the development of asthma, specifically, reviewing numerous studies published during 2000 or later in peer-reviewed English language publications, which directly or tangentially evaluated the development of asthma after vaccination.

The majority of the reviewed articles found no potential causality between vaccinations covered by the VICP and the development of asthma. The search did not identify any peer-reviewed articles that evaluated or discussed the possible role of food allergen

[17] Arthur M. Silverstein, ''Clemens Freiherr von Pirquet: Explaining immune complex disease in 1906,'' *Nature Immunology* 1, no. 6 (2000): 453–5.

[18] H. Gideon Wells, ''Studies on the Chemistry of Anaphylaxis,'' *The Journal of Infectious Diseases* 5, no. 4 (1908): 449–483.

[19] H. Gideon Wells, ''Studies on the Chemistry of Anaphylaxis (III). Experiments with Isolated Proteins, Especially Those of the Hen's Egg,'' *The Journal of Infectious Diseases* 9, no. 2 (1911): 147–71.

[20] H. Gideon Wells and Thomas B. Osborne, ''The biological reactions of the vegetable proteins,'' *The Journal of Infectious Diseases* 8, no. 1 (1911): 66–124.

[21] Kate Grimshaw, Kirsty Logan, Sinead O'Donovan, et al., ''Modifying the infant's diet to prevent food allergy,'' *Archives of Disease Childhood* 102, no. 2 (2017): 179–186.

[22] George Du Toit, Graham Roberts, Peter H. Sayre, et al., ''Randomized Trial of Peanut Consumption in Infants at Risk for Peanut Allergy,'' *The New England Journal of Medicine* 372, no. 9 (2015): 803–813.

[23] Vinu Arumugham, ''Evidence that Food Proteins in Vaccines Cause the Development of Food Allergies and its Implications for Vaccine Policy,'' *Journal of Developing Drugs,*'' (October 2015), *https://www.researchgate.net/publication/285580954_Evidence_that_Food_Proteins_in_Vaccines_Cause_the_Development_of_Food_Allergies_and_Its_Implications_for_Vaccine_Policy?_sg=_2GjOVUyCyFmiLl1OWGBk6iBA3OnpAlN-gTrpR1QpTn0ZRXL0Vn1P6pO6f6zk9mKp0aVRVOS09R9tmY* (accessed May 3, 2018).

[24] Tetsuo Nakayama, Takuji Kumagai, Naoko Nishimura, et al., ''Seasonal split influenza vaccine induced IgE sensitization against influenza vaccine,'' *Vaccine* 33, no. 45 (2015): 6099–105.

[25] Ake Davidsson, Jens-Christian Eriksson, Stig Rudblad, Karl Albert Brokstad, ''Influenza Specific Serum IgE is Present in Non-Allergic Subjects,'' *Scandinavian Journal of Immunology* 62, no. 6 (2005): 560–1.

[26] E.J. Ryan, L. Nilsson, N.I.M. Kjellman, et al., ''Booster immunization of children with an acellular pertussis vaccine enhances Th2 cytokine production and serum IgE responses against pertussis toxin but not against common allergens,'' *Clinical and Experimental Immunology* 121, no. 2 (2000): 193–200.

[27] Patrick G. Holt, Tom Snelling, Olivia J. White, et al., ''Transiently increased IgE responses in infants and pre-schoolers receiving only acellular Diphtheria–Pertussis–Tetanus (DTaP) vaccines compared to those initially receiving at least one dose of cellular vaccine (DTwP)—Immunological curiosity or canary in the mine?'' *Vaccine* 34, no. 35 (2016): 4259–4261.

[28] Tamar Smith-Norowitz, Darrin Wong, Melanie Kusonruksa, et al., ''Long Term Persistence of IgE Anti-influenza Virus Antibodies In Pediatric and Adult Serum Post Vaccination with Influenza Virus Vaccine,'' *International Journal of Medical Sciences* 8, no. 3 (2011): 239, 241–243.

[29] Harumi Kuno-Sakai and Mikio Kimura, ''Removal of gelatin from live vaccines and DTaP—an ultimate solution for vaccine-related gelatin allergy,'' *Biologicals* 31, no. 4 (2003): 245–249.

[30] Institute of Medicine (IOM), *Adverse Effects of Vaccines: Evidence and Causality* (Washington, DC: The National Academies Press, 2012), 356.

[31] National Asthma Education and Prevention Program, Third Expert Panel on the Diagnosis and Management of Asthma. *Expert Panel Report 3: Guidelines for the Diagnosis and Management of Asthma: Clinical Practice Guidelines.* (Bethesda, MD: National Heart, Lung, and Blood Institute (NHLBI), 2007): 11–34.

[32] Augusto Litonjua and Scott T Weiss. ''Risk Factors for Asthma,'' *UptoDate,* last updated May 3, 2018, *https://www.uptodate.com/contents/risk-factors-for-asthma* (accessed May 3, 2018).

[33] George Guibas, Spyridon Megremis, Peter West, and Nikolas G. Papadopoulos, et al., ''Contributing factors to the development of childhood asthma: working toward risk minimization,'' *Expert Review of Clinical Immunology* 11, no. 6 (2015): 721–35.

[34] George Guibas, Alexander G. Mathioudakis, Marina Tsoumani, and Sophia Tsabouri, ''Relationship of Allergy with Asthma: There Are More Than the Allergy ''Eggs'' in the Asthma ''Basket'','' *Frontiers in Pediatrics* 5 (2017): 92.

[35] Padmaja Subbarao, Allan Becker, Jeffrey R. Brook, et al., ''Epidemiology of asthma: risk factors for development,'' *Expert Review of Clinical Immunology* 5, no. 1 (2009): 77–95.

contaminated vaccines or ''pathogen associated vaccine antigens'' in the development or exacerbation of asthma. Vaccines studied in the published articles included diphtheria, pertussis, and tetanus (DPT), MMR, measles, oral polio virus (OPV), Prevnar 13, Hib, and Hepatitis B. Fifteen studies found no association between vaccinations and asthma.[36 37 38 39 40 41 42 43 44 45 46 47 48] Some studies found a protective effect suggesting that asthma risk was reduced with vaccination.[49 50 51]

Three studies had mixed results with two of them possibly having confounding variables. A study by Laubereau showed Hib-vaccinated children had a slightly higher risk for asthma. The authors of the study stated, ''results have to be interpreted with caution. Biological evidence to support a causal association is not available.'' Some of the questions the authors posed regarding the results dealt with the validity of parental reports and possible recall bias.[52]

A study by Benke, et al. of 3,200 22–44 year old individuals in Australia showed no difference in the risk of asthma among subjects who received DTP, Hepatitis B, measles, MMR, and OPV. However, an analysis of individuals who had received all three MMR, OPV and DTP vaccines showed an increased risk of asthma. Authors state there is ''relatively weak support . . . (that) vaccinations may lead to increased risk of asthma, but caution is advised due to possible recall bias.'' They write that typically studies of young adults who self-report vaccination histories may be subject to significant recall bias. In this study, childhood vaccination was based entirely on subject recall. In addition, as noted by the authors, associations for atopy and vaccinations appeared consistently weak for all vaccines investigated. Since atopic asthma has a strong association with atopy, this also does not suggest that vaccines led to the increase in asthma.[53]

A study by Thomson, et al. demonstrated conflicting results. OPV and MMR vaccines decreased the risk of asthma at age 2, and OPV decreased the risk of asthma at age 6. Also, the diphtheria and tetanus (DT) vaccine that was administered in the first year of life increased the risk of asthma at 6 years. However, this study had significant limitations. Nearly 21 percent of the subjects were lost to follow-up. Only children with a previous reaction to DPT vaccine were given DT suggesting that this may be an at-risk group. In addition, there was a small sample size and there was no control group.[54]

Another study by McDonald, et al. demonstrated an association between timing of DPT receipt and risk of asthma. This study consisted of 11,531 children born in Manitoba during 1995 who received at least four doses of DPT. The researchers looked at timing of vaccine receipt and the development of asthma and found that delaying the first dose of DPT by greater than 2 months decreased risk of asthma by 50 percent. They identified several potential confounding factors, including the fact that the reason for immunization delay was unknown. Children without asthma may visit a physician less often with fewer opportunities to be vaccinated. This may lead to self-selection. Also, there was not a comparison control (unvaccinated) group.

In summary, current scientific evidence does not support a causal association between vaccinations and asthma. There is no evidence that vaccination leads to IgE antibody against the most common causes of wheezing in childhood, namely respiratory syncytial virus, and human rhinovirus. There is no evidence that individuals develop IgE sensitization by injection of food proteins in vaccines and that subsequent inhalation of these particles causes symptoms of asthma. There is no evidence that inhalation of vaccine antigens triggers asthma symptoms via an IgE mechanism. Although some studies show a possible association with asthma, these have significant lapses in methodology. The majority of studies show no association.

Tics

On March 16, 2017, and May 4, 2017, a private citizen submitted letters to HHS requesting that tics be added to the Table. The petitioner claims that two CDC employees have been quoted as believing there is evidence that vaccines can cause tics; neither the CDC nor the CDC employees have verified these comments. The petitioner mentions a study by Barile and Thompson in support of his request. The petitioner did not specify vaccine type or differentiate between thimerosal-containing versus thimerosal-free vaccines.

[36] H. Ross Anderson, Jan D. Poloniecki, David P. Strachan, et al., ''Immunization and symptoms of atopic disease in children: results from the international study of asthma and allergies in children,'' *American Journal of Public Health* 91, no. 7 (2001): 1126–9.

[37] Kristin Wickens, Julian Crane, Trudi Kemp, et al., ''A case-control study of risk factors for asthma in New Zealand children,'' *Australian and New Zealand Journal of Public Health* 25, no. 1 (2001): 44–49.

[38] Frank DeStefano, David Gu, Piotr Kramarz, et al., ''Childhood vaccinations and the risk of asthma,'' *Pediatric Infectious Disease Journal* 21, no. 6 (2002): 498–504.

[39] H. P. Roost, M. Gassner, L. Grize, et al., ''Influence of MMR-vaccinations and diseases on atopic sensitization and allergic symptoms in Swiss schoolchildren,'' *Pediatric Allergy and Immunology* 15, no.5 (2004): 401–7.

[40] Julie E. Maher, John P. Mullooly, Lois Drew, and Frank DeStefano, ''Infant vaccinations and childhood asthma among full-term infants,'' *Pharmacoepidemiology and Drug Safety* 31, no. 1 (2004): 1–9.

[41] Monique Mommers, Gerard M. H. Swaen, Michela Weishoff-Houben, et al., ''Childhood infections and risk of wheezing and allergic sensitisation at age 7–8 years,'' *European Journal of Epidemiology* 19, no. 10 (2004): 945–51.

[42] John P. Mullooly, Roberleigh Schuler, Michael Barrett, and Julie E. Maher, ''Vaccines, antibiotics, and atopy,'' *Pharmacoepidemiology and Drug Safety* 16, no. 3 (2007) 275–88.

[43] Ran D. Balicer, Itamar Grotto, Marc Mimouni, and Daniel Mimouni, ''Is childhood vaccination associated with asthma? A meta-analysis of observational studies,'' *Pediatrics* 120, no. 5 (2007): e1269–77.

[44] Ben D. Spycher, Michael Silverman, Matthias Egger, et al., ''Routine vaccination against pertussis and the risk of childhood asthma: a population-based cohort study,'' *Pediatrics* 123, no. 3 (2009): 944–50.

[45] John P. Mullooly, John Pearson, Lois Drew, et al., ''Wheezing lower respiratory disease and vaccination of full-term infants,'' *Pharmacoepidemiology and Drug Safety* 11, no. 1 (2002): 21–30.

[46] Gabriele Nagel, Gudrun Weinmayr, Carsten Flohr, et al., ''Association of pertussis and measles infections and immunizations with asthma and allergic sensitization in ISAAC Phase Two,'' *Pediatric Allergy and Immunology* 23, no. 8 (2012): 737–46.

[47] Hung Fu Tseng, Lina S. Sy, In-Lu Amy Liu, et al., ''Postlicensure surveillance for pre-specified adverse events following the 13-valent pneumococcal conjugate vaccine in children,'' *Vaccine* 24, no. 22 (2013): 2578–83.

[48] Vittorio DeMicheli, Alessandro Rivetti, Maria Grazia Debalini and Carlo Di Pietrantonj, ''Vaccines for measles, mumps and rubella in children,'' *Cochrane Database of Systematic Reviews* 15, no. 2 (2012): 4, 18, 21, 135–139.

[49] Clara Amalie, Gade Timmermann, Christa Elyse Osuna, Ulrike Steuerwald, et al., ''Asthma and allergy in children with and without prior measles, mumps, and rubella vaccination,'' *Pediatric Allergy and Immunology* 26, no. 8 (2015): 742–749.

[50] John P. Mullooly, Roberleigh Schuler, Jill Mesa, et al., ''Wheezing lower respiratory disease and vaccination of premature infants,'' *Vaccine* 29, no. 44 (2011): 7611–7.

[51] H. P. Roost, M. Gassner, L. Grize, et al., ''Influence of MMR-vaccinations and diseases on atopic sensitization and allergic symptoms in Swiss schoolchildren,'' *Pediatric Allergy and Immunology* 15, no. 5 (2004): 401–7.

[52] B. Laubereau, V. Grote, B. Holscher, et al., ''Vaccination against Haemophilus influenzae type b and atopy in East German schoolchildren,'' *European Journal of Medical Research* 7, no. 9 (2002): 387, 389–391.

[53] G. Benke, M. Abramson, J. Raven, et al., ''Asthma and vaccination history in a young adult cohort,'' *Australian and New Zealand Journal of Public Health* 28, no. 4 (2004): 337.

[54] Jennifer A. Thomson, Constance Widjaja, Abbi A. P. Darmaputra, et al., ''Early childhood infections and immunisation and the development of allergic disease in particular asthma in a high-risk cohort: A prospective study of allergy-prone children from birth to six years,'' *Pediatric Allergy and Immunology* 21, no. 7: 1076, 1079–1084.

Tics are defined as sudden, rapid, recurrent, non-rhythmic, stereotyped motor movement or vocalization.[55] They are involuntary, but can be suppressed for varying lengths of time and are markedly diminished during sleep. The onset of tics almost always occur in childhood with multiple tics and complex vocal sounds developing over time, usually peaking in severity by 10–12 years of age. The precise etiology of tics is not known, but it is thought to be due to chemical abnormalities in the brain. The risk of developing tics and the prognosis are influenced by temperamental, environmental, genetic, and physiological factors. Diagnosis of tic disorders is hierarchical and complex. Therefore, specialists typically diagnose tics and tic disorders.

The petition mentions a study by Barile without a citation. Presumably, this is the study published in the Journal of Pediatric Psychology in 2012.[56] The study's ''objective was to examine associations between thimerosal-containing vaccines and immunoglobulins early in life and neuropsychological outcomes evaluated at children aged 7–10 years.'' The study population was 1,047 children ages 7–10, born between January 1993 and March 1997. The evaluators measured seven neuropsychological outcomes during a 3-hour testing period with the child including the following: (1) Intellectual functioning, (2) speech and language, (3) verbal memory, (4) executive functioning, (5) fine motor coordination, (6) tics, and (7) behavior regulation. The authors found no statistically significant associations between thimerosal exposure from vaccines early in life in six of the seven outcomes. There was a small, statistically significant association between early thimerosal exposure and the presence of tics in boys. However, the authors concluded that this finding should be interpreted with caution because of limitations in the measurement of tics and also the limited biological plausibility regarding a causal relationship. The authors suggested additional studies were needed to examine these associations using more reliable and valid measure of tics.[57]

There are several significant limitations of the Barile study. The only training the evaluators received for tics assessment was based on a 30-minute video on the diagnosis of Tourette syndrome from 1989 and may not have been sufficient to adequately diagnose the subjects. These raters were not required to meet any criteria for skill or reliability criteria. This could have led to misdiagnosis of the study subjects. The parent's assessment of the presence or absence of tics was not concordant with the assessor's reports. The study does not provide the parents' assessment of tics. However, positive presence of tics from parent's report and the assessor's report of tics agreed only 23% of the time for motor tics and 16% of the time for phonic tics. Thus, this outcome of interest, tics, was either not noticed by, or is not consistent with, behaviors that would be observed by or concerning to parents. The response rate was low—only 30 percent of invitees agreed to participate.

The petition did not specify vaccine type or if the vaccines of concern were thimerosal-containing or not. However, according to the citizen, the Barile study mentioned in the petition specifically focused on thimerosal-containing vaccines. Thimerosal is a mercury-based preservative that is broken down into ethyl mercury after entering the body. The low levels of ethyl mercury in vaccines are broken down by the body differently and clear out of the blood more quickly than methylmercury.[58] There is no evidence of harm caused by low doses of thimerosal in vaccines, except for minor reactions like redness and swelling at the injection site. Multi-dose FDA-approved seasonal influenza vaccines contain thimerosal as a preservative however, single-dose presentations that do not contain thimerosal as a preservative are available for use in infants, children, adults, the elderly and pregnant women. All other vaccines routinely recommended for children 6 years of age or younger and marketed in the U.S. do not contain thimerosal.[59] MMR vaccines do not and never did contain thimerosal. Varicella (chickenpox), inactivated polio (IPV), and pneumococcal conjugate vaccines have also never contained thimerosal. There are numerous studies and independent reviews supporting the safe use of thimerosal in vaccines.[60 61 62 63 64 65 66 67 68 69 70 71 72 73]

An initial literature search was performed looking for articles on tics by the two CDC employees mentioned in the petition, Dr. Thompson and Dr.

[55] American Psychiatric Association, *Diagnostic and statistical manual of mental disorders (5th ed.).* (Arlington, VA: American Psychiatric Publishing, 2013): 81.

[56] John P. Barile, Gabriel P. Kuperminc, Eric S. Weintraub, et al., ''Thimerosal Exposure in Early Life and Neuropsychological Outcomes 7–10 Years Later,'' *Journal of Pediatric Psychology* 37, no. 1 (2012): 115.

[57] John P. Barile, ''Thimerosal Exposure in Early Life and Neuropsychological Outcomes 7–10 Years Later,'' 115.

[58] Centers for Disease Control and Prevention, *Understanding Thimerosal, Mercury, and Vaccine Safety,* February 2013, *https://www.cdc.gov/vaccines/hcp/patient-ed/conversations/downloads/vacsafe-thimerosal-color-office.pdf* (accessed May 3, 2018).

[59] One single dose presentation of seasonal influenza vaccine, Fluvirin's single-dose presentation, utilizes thimerosal as part of its manufacturing process, not as a preservative, and a trace remains in the final presentation.

[60] Nick Andrews, Elizabeth Miller, Andrew Grant, et al., ''Thimerosal Exposure in Infants and Developmental Disorders: A Retrospective Cohort Study in the United Kingdom Does Not Support a Causal Association,'' *Pediatrics* 114, no. 3 (2004): 584–591.

[61] Eric Fombonne, Rita Zakarian, Andrew Bennett, et al., ''Pervasive Developmental Disorders in Montreal, Quebec, Canada: Prevalence and Links with Immunizations,'' *Pediatrics* 118, no. 1 (2006): e139–150.

[62] Anders Hviid, Michael Stellfeld, Jan Wohlfahrt, et al., ''Association between Thimerosal-Containing Vaccine and Autism,'' *Journal of the American Medical Association* 290, no. 13 (2003): 1763–1766.

[63] Institute of Medicine, *Immunization Safety Review: Vaccines and Autism. Institute of Medicine* (Washington, DC: The National Academies Press, 2004): 145.

[64] Cristofer Price, William W. Thompson, Barbara Goodson, et al., ''Prenatal and Infant Exposure to Thimerosal from Vaccines and Immunoglobulins and Risk of Autism,'' *Pediatrics* 126, no. 4 (2010): 656–664.

[65] Robert Schechter and Judith K. Grether, ''Continuing Increases in Autism Reported to California's Developmental Services System,'' *Archives of General Psychiatry* 65, no. 1 (2008): 19–24.

[66] William Thompson, Cristofer Price, Barbara Goodson, et al., ''Early Thimerosal Exposure and Neuropsychological Outcomes at 7 to 10 Years,'' *The New England Journal of Medicine* 357, no.13 (2007): 12811292.

[67] Global Advisory Committee on Vaccine Safety, *Statement on Thiomersal* (World Health Organization, 2006): *http://www.who.int/vaccine_safety/committee/topics/thiomersal/statement_jul2006/en/* (accessed May 3, 2018).

[68] Agency for Toxic Substances and Disease Registry (ATSDR), *Toxicological Profile for Mercury.* (Atlanta, GA, 1999).

[69] American Academy of Pediatrics, *Vaccine Safety: Examine the Evidence,* April 2013, *https://www.healthychildren.org/English/safety-prevention/immunizations/Pages/Vaccine-Studies-Examine-the-Evidence.aspx?gclid=Cj0KCQjwrLXXBRCXARIsAIttmRNIMWanl3CP-P6t8eA1MPl07uJFNPpxF2dzPEJkshVq9-U5kRozmQQaAki1EALw_wcB* (accessed May 3, 2018).

[70] L. Magos, ''Review on the toxicity of ethylmercury, including its presence as a preservative in biological and pharmaceutical products,'' *Journal of Applied Toxicology* 21 no. 1, (2001): 1–5.

[71] Robert J. Mitkus, David B. King, Mark O. Walderhaug, and Robert A. Forshee, ''A Comparative Pharmacokinetic Estimate of Mercury in U.S. Infants Following Yearly Exposures to Inactivated Influenza Vaccines Containing Thimerosal,'' *Risk Analysis* 34, no. 4 (2014): 735–50.

[72] Mieszko Olczak, Michalina Duszczyk, Pawel Mierzejewski, et al., ''Lasting neuropathological changes in rat brain after intermittent neonatal administration of thimerosal,'' *Folia Neuropathologica* 48, no. 4 (2010): 258–69.

[73] Michael E. Pichichero, Elsa Cernichiari, Joseph Lopreiato, and John Treanor, ''Mercury Concentrations and Metabolism in Infants Receiving Vaccines Containing Thiomersal: A Descriptive Study,'' *The Lancet* 360, no. 9347 (2002): 1737–41.

Yeargin-Allsop. There are two additional studies related to tics that involved Dr. Thompson. One article examined early thimerosal exposure and neuropsychological outcomes in children aged 7–10 and did not find an association between tics and vaccinations containing thimerosal.[74] The second article by Iqbal et al. was designed to evaluate the association between antibody-stimulating proteins and polysaccharides from early childhood vaccines and neuropsychological outcomes at age 7–10 years. There were no adverse associations between antigens through vaccines in the first 2 years of life and neuropsychological outcomes, including tics in later childhood.[75]

HHS conducted a comprehensive literature review of the major medical databases to search for articles linking tics/tic disorders to vaccinations that do not contain thimerosal. There is a paucity of literature on tics/tic disorders as a result of vaccinations. Leslie, et al. authored one article that discussed tics. The objective of this study was to examine whether antecedent vaccinations are associated with increased incidence of obsessive compulsive disorder (OCD), anorexia nervosa, anxiety disorder, chronic tic disorder, attention deficit hyperactivity disorder, major depressive disorder, and bipolar disorder. Using claims data, the investigators compared the prior year's occurrence of vaccinations in children and adolescents with the above neuropsychiatric disorders that were newly-diagnosed between January 2002 and December 2002, as well as two control conditions (broken bones and open wounds). The investigators found children with OCD, anorexia nervosa, anxiety disorder, and tic disorder were more likely to have received influenza vaccine during the preceding 1-year period. They concluded that the onset of some neuropsychiatric disorders may be temporally-related to prior vaccinations, but stated it does not prove a causal role of vaccinations in the etiology of these conditions.[76]

This study had several limitations. It relied on administrative retrospective data rather than systematically obtained clinical data. Therefore, diagnostic misclassification may have occurred. The dates in which individuals were diagnosed do not indicate disease onset dates, which may suggest a temporal association where none exists. In addition, the control groups may not be similar enough to the disease groups. Furthermore, the influenza vaccine is given annually and is the most frequently administered vaccine. By chance, there may be many diagnoses made within a year of flu vaccination. Thus, this case-control study provides no more than a temporal association and does not give an absolute risk.

In summary, there is limited literature on tics/tic disorders and vaccinations. Childhood vaccines do not contain thimerosal and influenza vaccines have thimerosal-free formulations. Current scientific evidence does not support a causal association between thimerosal-containing or thimerosal-free vaccinations and tics/tic disorders.

PANS, PITAND, PANDAS, EAE, and ADEM

On February 20, 2017, and March 20, 2017, a private citizen submitted written petitions requesting HHS to add PANS, PITAND, PANDAS, EAE, and ADEM to the Table. The petitions assert that certain components in pertussis vaccines cause the development of PANS and/or PITAND and conjugate and polysaccharide pneumococcal vaccines and Hib vaccines cause or enable the development of PANS and/or PANDAS. However, not all pneumococcal vaccines are covered by the VICP. There are two types of pneumococcal vaccines given in the U.S. The pneumococcal conjugate vaccine (PCV13), which is administered routinely to infants and children up to age 5, and the pneumococcal polysaccharide vaccine (PPV23), which is given to adults age 65 and older and individuals of varying age with certain medical conditions making them at higher risk for pneumococcal infection. Since December 18, 1999, the VICP has covered only the pneumococcal conjugate vaccine (PCV13).

PANS, PITAND, and PANDAS

PANS, PITAND, and PANDAS are proposed conditions based on a concept that an immune basis may underlie and may trigger disorders associated with movement and behavioral abnormalities. A hypothesis is that ''neuropsychiatric syndromes may result from various etiologies, including hereditary, environmental, and inflammatory causes.''[77] It has been hypothesized that infections with group A streptococcus (GAS) and others may trigger autoimmune responses that can cause or exacerbate childhood-onset OCD or tic disorders (including Tourette syndrome). A theory proposed is that antibodies against GAS cross-react with brain antigens by molecular mimicry resulting in autoantibody-mediated neuronal cell signaling in susceptible hosts.[78] Initially researchers coined the term PANDAS and later this was modified to PANS. Neither PITAND, PANS, nor PANDAS are officially recognized disease entities and do not have diagnostic codes in either: (a) International Statistical Classification of Diseases and Related Health Problems (ICD–10, most recent revision, 2010); or (b) Diagnostic and Statistical Manual of Mental Disorders (DSM–V; most recent revision, 2013).

The diagnostic criteria proposed for PANS include abrupt onset of symptoms of OCD or food restriction (anorexia) plus two of the following:

- Anxiety, emotional lability and/or depression, irritability, aggression and/or severely oppositional behaviors, behavioral (developmental) regression, deterioration in school performance, sensory or motor abnormalities, somatic signs and symptoms (*e.g.,* sleep disturbances, enuresis, urinary frequency); and
- Symptoms not better explained by a known neurologic or medical disorder.[79]

To support the claim that PANS and/or PITAND are caused by pertussis-containing vaccines, the petition outlines a mechanism of molecular mimicry and autoantibody-mediated neuronal cell-signaling leading to symptoms. To support the claim that PANS and/or PANDAS are caused or enabled by pneumococcal and Hib vaccines, the petition outlines a mechanism of injury in which vaccination with pneumococcal/Hib vaccines results in disruption of the blood-brain barrier in a susceptible child, which then allows circulating GAS antibodies to enter the central nervous system (CNS). This results in cross-reactivity between GAS antibodies and CNS structures, which leads to symptoms of PANS/PANDAS.

[74] Thompson, ''Early thimerosal exposure and neuropsychological outcomes at 7 to 10 years,'' 1285.

[75] Iqbal, ''Number of antigens in early childhood vaccines and neuropsychological outcomes at age 7–10 years,'' 1263, 1266.

[76] Douglas L. Leslie, Robert A. Kobre, Brian J. Richmond, et al. ''Temporal Association of Certain Neuropsychiatric Disorders Following Vaccination of Children and Adolescents: A Pilot Case-Control Study,'' *Frontiers in Psychiatry* 8, no. 3 (2017): 6.

[77] Kyle A. Williams and Susan E. Swedo, ''Post-infectious autoimmune disorders: Sydenham's chorea, PANDAS and beyond,'' *Brain Research* 1617 (2015): 145.

[78] Albert J. Allen, Henrietta L. Leonard, and Susan E. Swedo, ''Case study: a new infection-triggered, autoimmune subtype of pediatric OCD and Tourette's syndrome,'' *Journal of the American Academy of Child Adolescent Psychiatry* 34, no. 3 (1995): 307–311.

[79] Susan E. Swedo, James F. Leckman, and Noel R. Rose, ''From Research Subgroup to Clinical Syndrome: Modifying the PANDAS Criteria to Describe PANS (Pediatric Acute-onset Neuropsychiatric Syndrome),'' *Pediatrics & Therapeutics* 2, no. 2 (2012): 3.

The 2012 IOM report did not review any possible association between pertussis-containing vaccines or any vaccine and PANS and/or PITAND, nor did it review any possible association between pneumococcal conjugate vaccines and Hib vaccines or any vaccine and PANS and/or PANDAS. HHS gathered data from the existing medical literature in addition to the evidence submitted in the petition. A literature search of the major medical databases was conducted searching for any articles linking the development of PANS, PITAND, or PANDAS to vaccinations, including pertussis-component, pneumococcal conjugate, and Hib vaccines.

Despite an extensive search of peer-reviewed English language publications, HHS did not find any published research addressing any linkages, potential causality, or enablement between vaccinations covered by the VICP, including pertussis-containing, pneumococcal conjugate, and Hib vaccinations, and the development of PANS, PITAND, and/or PANDAS in any population. There are no published data on PANS and PITAND regarding possible specific infectious or non-infectious triggers and autoimmune mechanisms. Data on the more well-studied PANDAS are conflicting.[80] Some researchers question the autoimmune mechanism of PANDAS and no specific autoimmune antibody is agreed upon as a pathogenic mechanism for its symptoms.[81]

After an extensive literature search, HHS has not found any published study that examines anti-neuronal antibodies in children suspected of PANS or PITAND following pertussis infection or following pertussis immunization. HHS has not found any studies that examine whether pneumococcal conjugate vaccines or pneumococcal infections and Hib vaccines or Hib infections disrupt the filtering mechanism of the blood-brain barrier to allow circulating GAS antibodies to cross into the CNS in a susceptible child and, once across the barrier, to react with CNS structures to generate neuropsychiatric symptoms. In addition, HHS is not aware of any published studies concluding that PANS, PITAND, and/or PANDAS are caused by pertussis infection or pertussis, pneumococcal conjugate or Hib vaccines.

EAE and ADEM

EAE is not a clinical diagnosis. EAE is an animal model of autoimmune disease of the CNS.[82] As EAE does not occur in humans, it will not be discussed separately from the human diseases (which are discussed below). Pertussis toxin has been used in EAE studies due to its immunogenicity (ability to evoke an immune response). However, acellular pertussis vaccines are formulated to contain inactivated pertussis toxin and not pertussis toxin that is used in animal models of EAE.

Encephalopathy is currently an injury on the Table for vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen, and vaccines containing measles, mumps, and rubella virus or any of its components. ADEM can have encephalopathy as a symptom, but ADEM and encephalopathy are two distinct conditions. The autoimmune etiology is specific for ADEM and the onset between primary exposure and development of primary antibody response is 7–10 days as opposed to 0–72 hours for the onset to meet the Table definition for encephalopathy.[83] The time period for development of ADEM is outside the 0–72 hour time period of the Table definition for acellular pertussis vaccine and encephalopathy and encephalitis. With ADEM, there is a characteristic demyelination in the CNS and a strong association with prodromal (infectious) illness that is absent in an encephalopathy as defined in the Table. These differences were significant enough that the IOM 2012 Report considered ADEM separate from encephalopathy and encephalitis.

Multiple articles were submitted by the petitioner in support of adding ADEM/EAE to the Table.[84 85 86 87 88 89 90 91 92 93 94] However, the studies dealing with EAE do not have relevance to pertussis vaccinations and/or ADEM. These studies do not provide any evidence that pertussis vaccinations cause ADEM.

The IOM reviewed the epidemiologic and mechanistic evidence as to whether pertussis vaccinations cause ADEM. They found the evidence inadequate to accept or reject a causal relationship between pertussis-containing vaccines and ADEM. HHS conducted a review of the literature published after the IOM report regarding ADEM and vaccination. A paper by Baxter et al. identified all cases of ADEM in the Vaccine Safety Datalink (VSD). The VSD is a collaborative project between CDC and eight health care organizations that utilizes electronic health data to monitor the safety of vaccines. The VSD study analyzed 64 million vaccine doses and calculated the risk difference of being diagnosed with ADEM for each vaccine. This study revealed two cases of ADEM after Tdap (tetanus, diphtheria, and acellular pertussis) vaccination. The study was limited with regard to assessing causality due to the small number of ADEM cases. It is also possible this finding could be due to chance alone due to multiple testing. Multiple testing refers to any instance that involves the simultaneous testing of several hypotheses.[95 96]

[80] Sonja Orlovska, Claus Høstrup Vestergaard, Bodil Hammer Bech, et al., ''Association of Streptococcal Throat Infection with Mental Disorders: Testing Key Aspects of the PANDAS Hypothesis in a Nationwide Study,'' *JAMA Psychiatry* 74, no. 7 (2017): 741.

[81] Williams, ''Post-infectious autoimmune disorders: Sydenham's chorea, PANDAS and beyond,'' 145.

[82] William J. Lindsey, ''EAE: History, Clinical Signs, and Disease Course,'' in *Experimental Models of Multiple Sclerosis,* eds..Ehud Lavi and Cris Constantinescu (New York: Springer Science+Business Media, Inc., 2005): 1.

[83] IOM, *Adverse Effects of Vaccines,* 546–7.

[84] Harald H. Hofstetter, Carey L. Shive, and Thomas G. Forsthuber, ''Pertussis Toxin Modulates the Immune Response to Neuroantigens Injected in Incomplete Freund's Adjuvant: Induction of Th1 Cells and Experimental Autoimmune Encephalomyelitis in the Presence of High Frequencies of Th2 Cells,'' (animal model), *The Journal of Immunology* 169, no. 1 (2002) 117–125.

[85] B. Diamond, G. Honig, S. Mader, et al., ''Brain-Reactive Antibodies and Disease,'' *Annual Review of Immunology* 31 (2013): 345–385.

[86] Hans Lassman, ''Acute disseminated encephalomyelitis and multiple sclerosis,'' *Brain* 133 (2010): 317–319.

[87] Kristina Leuner, Tanja Schutt, Christopher Kurz, et al., ''Mitochondrion-Derived Reactive Oxygen Species Lead to Enhanced Amyloid Beta Formation,'' (animal study), *Antioxidants and Redox Signaling* 16, no. 12 (2012): 1421–1433.

[88] Dan Zhou, Rajneesh Srivastava, Stefan Nessler, et al., ''Identification of a pathogenic antibody response to native myelin oligodendrocyte glycoprotein in multiple sclerosis,'' *Proceedings of the National Academy of Sciences of the United States of America (PNAS)* 103, no. 50 (2006): 19057–19062.

[89] Peter M. Clifford, Shabnam Zarrabi, Gilbert Siu, et al., ''Aβ peptides can enter the brain through a defective blood–brain barrier and bind selectively to neurons,'' (animal study), *Brain Research* 1142 (2007): 223–236.

[90] Ralf A. Linker and De-Hyung Lee, ''Models of autoimmune demyelination in the central nervous system: on the way to translational medicine,'' *Experimental & Translational Stroke Medicine* 1, no. 5 (2009): 1–10.

[91] Kevin O'Connor, Katherine A. McLaughlin, Philip L. De Jager, et al., ''Self-antigen tetramers discriminate between myelin autoantibodies to native or denatured protein,'' *Nature Medicine* 13, no. 2 (2007): 211–217.

[92] Fabienne Brilot, Russell C. Dale, Rebecca C. Selter, et al., ''Antibodies to native myelinoligodendrocyte glycoprotein in children with inflammatory demyelinating central nervous system disease,'' *Annals of Neurology* 66, no.6 (2009): 833–42.

[93] Alan G. Baxter, ''The origin and application of experimental autoimmune encephalomyelitis,'' *Nature Reviews Immunology* 7 (2007): 904–912.

[94] Roberto Furlan, Elena Brambilla, Francesca Sanvito, et al., ''Vaccination with amyloid-β peptide induces autoimmune encephalomyelitis in C57/BL6 mice,'' *Brain* 126, no. 2 (2003): 285–291.

[95] Roger Baxter, Edwin Lewis, Kristin Goddard, et al., ''Acute Demyelinating Events Following

Another study by Chang that analyzed post-licensure safety for diphtheria and acellular pertussis vaccines found no statistically significant adverse events including ADEM.[97] A study by Pellegrino looked at the onset of ADEM utilizing a post-marketing study from the U.S. and Europe. The investigators found a decrease in the diagnosis of ADEM in individuals who received DTaP, IPV, and Hib vaccines.[98] In summary, EAE is not a disease in humans but rather an experimental model. The Table only lists conditions found in humans. In addition, the current literature does not support a relationship between vaccines and ADEM.

Conclusion

In light of the above, HHS has determined that there is no reliable scientific evidence of an association between vaccines and asthma, autism, tics, PITAND, PANS, PANDAS, EAE, and/or ADEM. Therefore, HHS will not add them as injuries associated with any vaccine on the Table at this time.

Dated: February 22, 2019.

George Sigounas,

Administrator, Health Resources and Services Administration.

Approved: March 15, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–05618 Filed 3–26–19; 8:45 am]

BILLING CODE 4150–28–P

Vaccines: A Case Centered Analysis,'' *Clinical Infectious Diseases* 63, no. 11 (2016): 1461.

[96] Joseph P. Romano, Azeem M. Shaikh, and Michael Wolf, ''Multiple Testing,'' *The New Palgrave Dictionary of Economics,* Online Edition, eds. S.N. Durlauf and L.E. Blume (London: Palgrave Macmillan, 2010), 1. *http://home.uchicago.edu/amshaikh/webfilespalgrave.pdf.*

[97] Soju Chang, Patrick M. O'Connor, Barbara A. Slade, and Emily Jane Woo, ''US post licensure safety surveillance for adolescent and adult tetanus diphtheria and acelluar pertussis vaccines: 2005–2007,'' *Vaccine* 31, no. 10 (2013): 1447–1452.

[98] Paolo Pellegrino, Carla Carnovale, Valentina Perrone, et al., ''Acute Disseminated Encephalomyelitis Onset: Evaluation Based on Vaccine Adverse Event Reporting Systems,'' *PLoS One* 8, no. 10 (2013): 5.

Notices

Federal Register

Vol. 84, No. 59

Wednesday, March 27, 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

Agricultural Marketing Service

[Doc. No. AMS–TM–19–0031]

Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for revision of a currently approved collection titled ''Local Food Directories and Survey''.

Under the Agricultural Marketing Act of 1946, as amended, AMS is responsible for conducting research to enhance market access for small and medium sized farmers. The role of the Marketing Services Division (MSD) of AMS is to facilitate distribution of U.S. agricultural products. This information is used to populate USDA's National Farmers Market Directory and periodically market managers are invited to participate in a comprehensive survey assessing the farmers market sector. Beginning in 2020, the survey of the farmers market sector will be administered by the National Agricultural Statistical Service. Information will also be collected by AMS to populate the National Farmers Market Directory, as well as three additional local food directories: Community Supported Agriculture (CSA) Directory, Food Hub Directory, and On-Farm Market Directory. All four directories are national in scope and provide free advertising for producers of local agricultural products. The directories also assist customers to locate local food enterprises.

DATES: Comments on this notice must be received by May 28, 2019 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice. Comments should be submitted online at *www.regulations.gov* or mail to Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4509, South Building, Ag Stop 0269, Washington, DC 20250–0269.

All comments should be identified with the docket number (AMS–TM–19–XXXX), the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection during regular business hours at the above physical address from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received are requested to make an appointment in advance by calling (202) 720–8317.

FOR FURTHER INFORMATION CONTACT: Edward Ragland, Marketing Services Division, Transportation and Marketing Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4509, South Building, Ag Stop 0269, Washington, DC 20250–0269; Tel. 202–720–8317 FAX 202–690–0031. Comments should reference Docket No. AMS–TM–19–XXXX.

SUPPLEMENTARY INFORMATION:

Title: Local Food Directories and Survey.

OMB Number: 0581–0169.

Expiration Date of Approval: July 31, 2019.

Type of Request: Revision and Extension of a currently approved information collection.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), AMS is responsible for conducting research to enhance market access for small- and medium-sized farmers. The role of the Marketing Services Division (MSD) of AMS is to facilitate distribution of U.S. agricultural products. MSD identifies marketing opportunities, provides analysis to help take advantage of those opportunities, and develops and evaluates solutions, including improving farmers markets and other direct-to-consumer marketing activities. Various types of direct-to-customer local food enterprises serve different parts of the food marketing chain but all focus on the small-to medium-sized agricultural producers that have difficulty obtaining access to large scale commercial distribution channels.

The definitions of farmers markets, on-farm markets, community-supported agriculture (CSA), and food hubs, as utilized by AMS for the purposes of the Local Food Directories and Survey are listed below.

Topic areas in USDA's National Farmers Market Managers Survey include: Characteristics and history of farmers markets, types of products sold, including fresh, locally-grown produce, location of the markets, programs to encourage healthy eating, special events, marketing methods, participation in federal programs designed to increase consumption of fresh fruits and vegetables, vendor retention and recruitment, market growth and enhancement, information farmers market managers have and how they derive estimates of the number of customers, sales, and number of vendors.

A *farmers market* is a sales venue that features two or more farm vendors selling agricultural products directly to customers at a common, recurrent physical location. This marketing channel allows farm vendors to receive retail prices for their products, capturing a larger share of customers' food dollar.

An *on-farm market* is an area of a facility affiliated with a farm where transactions between a farm market operator and customers take place. An on-farm market may operate seasonally or year-round. On-farm markets are an important component of direct marketing, adding value by offering customers a visit to the farm and the opportunity to purchase products from the people who grew them.

A *CSA* is another type of food-production and direct marketing relationship between a farmer or farmers and a group of consumers who purchase ''shares'' of the season's harvest in advance of the growing season. The up-

front working capital generated by selling shares reduces the financial risk to the farmer(s). Generally, farmers receive better prices for their crops and have reduced marketing costs. Consumers benefit by receiving a periodic (usually weekly) delivery of fresh locally-grown fruits, vegetables, meats, eggs and other produce. They also benefit from the ability to collectively support the sustainability of local farmers.

A *food hub* is a business or organization that actively manages the aggregation, distribution, and marketing of source-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand. This marketing channel also allows farm operators to capture a larger share of consumers' food dollar.

On-farm markets, CSA, as well as food hubs, comprise an integral part of the urban/farm linkage and have continued to rise in popularity, mostly due to the growing consumer interest in obtaining fresh products directly from the farm. On-farm markets, CSA, and food hubs allow consumers to have access to locally grown, farm fresh produce, enable farmers the opportunity to develop a personal relationship with their customers, and cultivate consumer loyalty with the farmers. They are also providing greater access to fresh locally-grown fruits and vegetables, as well as playing an increasing role in encouraging healthier eating.

Local Food Directories and Survey—0581–0169

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.26 hours per response, (rounded).

Respondents: Farmers market managers, farm operators that operate on-farm stores, operators of CSA, farm operations, and operators of food hubs.

Estimated Number of Respondents: 66,250.

Estimated Total Annual Responses: 8,025.

Estimated Number of Responses per Respondent: .26.

Estimated Total Annual Burden on Respondents: 2,069 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 22, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–05847 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–19–0021]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Agricultural Marketing Service (AMS) is announcing a meeting of the Plant Variety Protection Board (Board). The meeting is being held to discuss a variety of topics including, but not limited to, work and outreach plans, subcommittee activities, and program activities. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Wednesday April 24, 2019, 1 p.m. to Friday April 26, 2019, 12 noon.

ADDRESSES: The meeting will be held at the Holiday Inn Chicago O'Hare, 5615 N Cumberland Avenue, Chicago, IL 60631. Telephone: (773) 693–5800.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, acting commissioner, Plant Variety Protection Office, USDA, AMS, Science and Technology Programs, 1400 Independence Avenue SW, Washington, DC 20250. Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the FACA (5 U.S.C., Appendix 2), this notice informs the public that the Plant Variety Protection Office (PVPO) is sponsoring a meeting of the Board on April 24, 2019 to April 26, 2019. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The Board is composed of 14 individuals who are experts in various areas of development and represent the seed industry sector, academia and government.

The Duties of the Board Are To: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the FACA; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the FACA, ''Public Interest in Wide Usage'' (7 U.S.C. 2404).

Meeting Agenda: The purpose of the meeting will be to discuss the PVPO 2019 program activities, 2018 Farm Bill amendment to the Plant Variety Protection Act, and cooperation with other countries. The Board plans to discuss program activities that encourage the development of new plant varieties. The meeting will be open to the public. Those wishing to participate are encouraged to pre-register by April 15, 2019, by contacting Jeffery Haynes, acting commissioner, at Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@ams.usda.gov* .

Meeting Accommodation: The meeting at USDA will provide reasonable accommodation to individuals with disabilities where appropriate. If you need reasonable accommodation to participate in this public meeting, please notify Jeffery Haynes at: Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@ams.usda.gov* .

Determinations for reasonable accommodation will be made on a case-by-case basis. Minutes of the meeting will be available for public review 30 days following the meeting on the internet at *http://www.ams.usda.gov/PVPO.*

Dated: March 21, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–05782 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LP–19–0028]

Notice of Request for Extension Without Change of a Currently Approved Information Collection for the National Sheep Industry Improvement Center

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection, ''National Sheep Industry Improvement Center'' (OMB 0581–0263).

DATES: Comments must be received by May 28, 2019.

Additional Information or Comments: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference docket number AMS–LP–19–0028 and note the date of submission and the page number of this issue in the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Director, Research and Promotion Division, Livestock and Poultry Program, AMS, USDA, 1400 Independence Avenue SW, Room 2610–S, STOP 0251, Washington, DC 20250–0251; by telephone (202) 720–1118, or fax (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the website at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Research and Promotion Division, Livestock and Poultry Program, AMS, USDA; 1400 Independence Ave. SW, Room 2610–S, STOP 0251, Washington, DC 20250–0251; by telephone (202) 720–1108, or fax (202) 720–1125.

SUPPLEMENTARY INFORMATION:

Title: National Sheep Industry Improvement Center.

OMB Number: 0581–0263.

Expiration Date of Approval: September 30, 2019.

Type of Request: Request for extension of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the National Sheep Industry Improvement Center (NSIIC). The NSIIC was initially authorized under the Consolidated Farm and Rural Development Act (Act), whose primary objective was to assist the U.S. sheep industry by strengthening and enhancing the production and marketing of sheep and their products in the United States. The information collection requirements in the request are essential to carry out the intent of the enabling legislation. The Act, as amended, was passed as part of the 1996 Farm Bill (Pub. L. 104–127, 110 Stat. 888). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification or once the full appropriation of $50 million was disbursed. Subsequently, the NSIIC was privatized on September 30, 2006, and the NSIIC's office was closed in early 2007.

In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), also known as the 2008 Farm Bill. The 2008 Farm Bill repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC. Additionally, the 2008 Farm Bill provided for $1 million in mandatory funding for fiscal year 2008 from the Commodity Credit Corporation for the NSIIC to remain available until expended. NSIIC has expended the $1 million authorized under the 2008 Farm Bill.

On October 7, 2014, as provided under the Agricultural Act of 2014 (Pub. L. 113–79), also known as the 2014 Farm Bill, NSIIC was awarded $1.475 million under the Sheep Production and Marketing Grant Program.

On December 20, 2018, as provided under the Agriculture Improvement Act of 2018 (Pub. L. 115–334), also know as the 2018 Farm Bill, NSIIC was awarded $2 million under the Sheep Production and Marketing Program.

Currently, NSIIC awards funds annually to organizations designed to strengthen and enhance the production and marketing of sheep and sheep products in the United States including the improvement of infrastructure business, resource development, and the development of innovative approaches to solve long-term needs.

AMS accepts nominations for membership on the NSIIC Board of Directors (Board) from national organizations that (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

The forms used in this collection are: Nominations for Appointments, AD–755 Background Information Form (OMB No. 0505–0001), and Nominee's Agreement to Serve.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.21 hour per response.

Respondents: National organizations submitting nominations to the Board who (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

Estimated Number of Respondents: 10.

Estimated Total Annual Responses: 30.

Estimated Number of Responses per Respondent: 1 per year per form.

Estimated Total Annual Burden: 6.25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 22, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–05846 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 21, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by April 26, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Feral Swine Survey.

OMB Control Number: 0535–0256.

Summary of Collection: Authority to collect these data is authorized under 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276. On February 3, 1999, Executive Order 13112 was signed by President Clinton establishing the National Invasive Species Council. The Executive Order requires that a Council of Departments dealing with invasive species be created. Currently there are 13 Departments and Agencies on the Council. A benchmark survey was conducted in 2015 in 11 States (Alabama, Arkansas, California, Florida, Georgia, Louisiana, North Carolina, Mississippi, Missouri, South Carolina, and Texas). Target population within these states consisted of farm operations who have historically produced one or more of the following crops: Corn, soybeans, wheat, rice, peanuts or sorghum (Texas only).

The focus for the 2019 survey will involve 12 states (Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, and Texas). The target population will be producers of hay, tree nuts (pecans), melons (cantaloupe, honeydew, or watermelon), sugarcane, sweet potatoes, or cotton, and in CA the focus will be on producers of hay, tree nuts (almonds), grapes, sod, carrots, lettuce, or strawberries.

Need and Use of the Information: The purpose of the proposed survey is to develop national and State estimates of the damage feral swine cause to agricultural operations, as well as costs of controls and benefits from feral swine hunting. These estimates will be used by APHIS to determine which areas have the greatest amount of damage and where to focus efforts at dealing with the feral swine problem.

Description of Respondents: Farms.

Number of Respondents: 27,900.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8,887.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–05796 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labelling

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on April 9, 2019. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 45th Session of the Codex Committee on Food Labelling (CCFL) of the Codex Alimentarius Commission, in Ottawa, Canada, May 13–17, 2019. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 45th Session of the CCFL and to address items on the agenda.

DATES: The public meeting is scheduled for April 9, 2019, from 1–5 p.m. EST.

ADDRESSES: The public meeting will take place in Meeting Room 107A of the Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250. Documents related to the 45th Session of the CCFL will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codex alimentarius/%E2%80%8Bmeetings-reports/%E2%80%8Ben.*

Douglas Balentine, U.S. Delegate to the 45th Session of the CCFL, invites U.S. interested parties to submit their comments electronically to the following email address: *douglas.balentine@fda.hhs.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 45th Session of the CCFL by conference call, please use the call-in-number: 888–844–9904 and participant code 5126092.

Registration: Attendees may register to attend the public meeting by emailing *uscodex@osec.usda.gov* by April 3, 2019. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For Further Information about the 45th Session of the CCFL, contact U.S. Delegate, Douglas Balentine, Director, Office of Nutrition and Food Labelling, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive (HFS–830), College Park, MD 20740. Telephone: (240) 402–2373, Email: *douglas.balentine@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: U.S. Codex

Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone 202–720–7760, Fax: (202) 720–3157, Email: *uscodex@osec.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Food Labelling (CCFL) are:

(a) To draft provisions on labelling applicable to all foods;

(b) to consider, amend if necessary, and endorse draft specific provisions on labelling prepared by other Codex Committees drafting standards, codes of practice and guidelines;

(c) to study specific labelling problems assigned to it by the Commission; and,

(d) to study problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The CCFL is hosted by Canada. The United States attends CCFL as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 45th Session of the CCFL will be discussed during the public meeting:

- Matters referred to the Committee by the CAC and Codex subsidiary bodies
- Matters of interest from FAO and WHO
- Consideration of labelling provisions in draft Codex standards
- Proposed draft Guidance for the Labelling of Non-Retail Containers
- Proposed draft Guidelines of Front-of-Pack Nutrition Labelling
- internet sales/e-commerce
- Innovation—use of technology in food labelling
- Labelling of alcoholic beverages
- Criteria for the definition of ''high in'' nutritional descriptors for fats, sugars, and sodium
- Labelling of foods in joint presentation and multipack formats
- Future work and direction of CCFL
- Other Business

Public Meeting

At the April 9, 2019, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Douglas Balentine, U.S. Delegate for the 45th Session of the CCFL (see **ADDRESSES**). Written comments should state that they relate to activities of the 45th Session of the CCFL.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://www.usda.gov/codex/,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on March 21, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2019–05768 Filed 3–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Eligibility Criteria for Tribal and Alaska Native Biomass Demonstration Projects Under the Indian Tribal Energy Development and Self-Determination Act

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of Eligibility Criteria for Biomass Demonstration Projects.

SUMMARY: The Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 amends the Tribal Forest Protection Act of 2004 to direct the Secretary of Agriculture (USDA), to enter into contracts or agreements with Indian tribes, and, in Alaska, tribal organizations to carry out demonstration projects to promote biomass energy production on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from federal lands.

The Act contains Eligibility Criteria required to be addressed by an Indian tribe or tribal organization in their application to the Secretary, in order to enter into Biomass Demonstration Projects. The Eligibility Criteria are required to be made publically available not later than 120 days after the date of the Act's enactment. The Act also contains Selection Criteria, which will be used, without modification, by the Secretary to evaluate applications submitted. The Act's Eligibility and Selection Criteria will be used, without modification, to select biomass demonstration projects on lands under the jurisdiction of the Secretary of Agriculture.

DATES: This Notice is applicable upon the date of publication in the **Federal Register**.

ADDRESSES: Documents may be viewed on the World-Wide internet at *https://www.fs.fed.us/spf/tribalrelations/authorities.shtml.*

FOR FURTHER INFORMATION CONTACT: Gary Church, Assistant Director, Forest Products, 202–205–1732, during normal business hours, or send an email to *wospecialproducts@fs.fed.us.* Additional information about this notice may be obtained on the World-Wide

internet at *https://www.fs.fed.us/spf/tribalrelations/authorities.shtml.* 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:

Background

Section 202 of Public Law 115–325, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 amends the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a *et seq.*) for the purpose of establishing Tribal and Alaska Native biomass demonstration projects for federally recognized Indian tribes and Alaska Native corporations to promote biomass energy production, on Bureau of Land Management and Forest Service lands.

For Tribal Biomass Demonstration Projects, the Act requires, for each of fiscal years 2017 through 2021, the Secretary to enter into stewardship contracts or similar agreements (excluding direct service contracts) with Indian tribes to carry out at least four new demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land, and in nearby communities, by providing reliable supplies of woody biomass from Federal land.

For Alaska Native Biomass Demonstration Projects, the Act requires, for each of fiscal years 2017 through 2021, the Secretary to enter into an agreement or contract with an Indian tribe or a tribal organization to carry out at least one new demonstration project to promote biomass energy production (including biofuel, heat, and electricity generation) by providing reliable supplies of woody biomass from Federal land. The terms Indian tribe and tribal organization have the same meanings as defined in the Indian Self-Determination and Education Assistance Act (section 4, 25 U.S.C. 5304).

Eligibility Criteria

The Act's Eligibility Criteria, without modification, will be used to select biomass demonstration projects on Forest Service lands under the jurisdiction of the Secretary of Agriculture. The Act's Tribal Biomass Demonstration Project Eligibility Criteria require the Indian tribe submit, to the Secretary of Agriculture, an application: (1) Containing such information as the Secretary may require; and (2) that includes a description of (A) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; and (B) the demonstration project proposed to be carried out by the Indian tribe.

The Act's Alaska Native Biomass Demonstration Project Eligibility Criteria require the Indian tribe or tribal organization submit, to the Secretary of Agriculture, an application: (1) Containing such information as the Secretary may require; and (2) that includes a description of the demonstration project proposed to be carried out by the Indian tribe or tribal organization.

Selection Criteria

The Act's Selection Criteria, without modification, will be used to evaluate applications submitted for biomass demonstration projects on Forest Service lands under the jurisdiction of the Secretary of Agriculture.

In evaluating the applications submitted under the Act's Tribal Biomass Demonstration Project Eligibility Criteria, the Secretary of Agriculture is required to: (1) To take into consideration (A) the factors set forth in paragraphs (1) and (2) of section 2(e) of the Tribal Forest Protection Act of 2004; and (B) whether a proposed project would—

(i) Increase the availability or reliability of local or regional energy;

(ii) Enhance the economic development of the Indian tribe;

(iii) Result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

(iv) Improve the forest health or watersheds of Federal land or Indian forest land or rangeland;

(v) Demonstrate new investments in infrastructure; or

(vi) Otherwise promote the use of woody biomass; and

(2) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

In evaluating the applications submitted under the Alaska Native Biomass Demonstration Project Eligibility Criteria, the Secretary of Agriculture is required to

(A) take into consideration whether a proposed project would—

(i) Increase the availability or reliability of local or regional energy;

(ii) Enhance the economic development of the Indian tribe;

(iii) Result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

(iv) Improve the forest health or watersheds of Federal land or non-Federal land;

(v) Demonstrate new investments in infrastructure; or

(vi) Otherwise promote the use of woody biomass; and

(B) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

Dated: March 8, 2019.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–05502 Filed 3–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for Inviting Applications for the Rural Business Development Grant Program To Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to invite applications for grants to provide Technical Assistance for Rural Transportation (RT) systems under the Rural Business Development Grant (RBDG) to provide Technical Assistance for RT systems and for RT systems to Federally Recognized Native American Tribes' (FRNAT) (collectively ''Programs'') and the terms provided in such funding. Successful applications will be selected by the Agency for funding and subsequently awarded from funds appropriated for the RBDG program.

The Agency will publish the amount of funding on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

DATES: See under **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Submit applications in paper format to the USDA Rural Development State Office for the State where the Project is located. A list of the USDA Rural Development State Office contacts can be found at: *http://www.rd.usda.gov/contact-us/state-offices.* If you want to submit an electronic application, follow the instructions for the RBDG funding announcement located at *http://www.grants.gov.* Please review the

Grants.gov website for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline.

FOR FURTHER INFORMATION CONTACT: Cindy Mason at (202) 690–1433, *cindy.mason@wdc.usda.gov* or Sami Zarour at (202) 720–9549, *sami.zarour@wdc.usda.gov,* Specialty Programs Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 4204-South, Washington, DC 20250–3226, or call 202–720–1400. For further information on this notice, please contact the USDA Rural Development State Office in the State in which the applicant's headquarters is located.

SUPPLEMENTARY INFORMATION:

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, county, state, and/or regional levels:

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments to areas for the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts.

Overview

Solicitation Opportunity Title: Rural Business Development Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.351.

Dates: Completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on June 25, 2019, to be eligible for FY 2019 grant funding. Electronic applications must be submitted via *grants.gov* no later by Midnight Eastern time on June 25, 2019. Applications received after this date will not be eligible for FY 2019 grant funding.

A. Program Description

1. *Purpose of the Program.* The purpose of this program is to improve the economic conditions of Rural Areas.

2. *Statutory Authority.* This program is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 4280, subpart E. The program is administered on behalf of Rural Business-Cooperative Service (RBS) at the State level by the USDA Rural Development State Offices. Assistance provided to Rural Areas under the program has historically included the provision of on-site Technical Assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in Rural Areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in Rural Areas.

Awards under the RBDG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart E, and in accordance with section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Information required to be in the application package includes Standard Form (SF) 424, ''Application for Federal Assistance;'' environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' SF LLL, ''Disclosure of Lobbying Activities;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' and a letter providing Board authorization to obtain assistance. For the FRNAT grant, which must benefit FRNATs, at least 75 percent of the benefits of the Project must be received by members of FRNATs. The Project that scores the greatest number of points based on the RBDG selection criteria and the discretionary points will be selected for each grant.

For the funding for Technical Assistance for RT systems, applicants must be qualified national organizations with experience in providing Technical Assistance and training to rural communities nationwide for the purpose of improving passenger transportation service or facilities. To be considered ''national,'' RBS requires a qualified organization to provide evidence that it can operate RT assistance programming nation-wide. An entity can qualify if they can work in partnership with other entities to fulfill the national requirement as long as the applicant will have ultimate control of the grant administration. For the funding for RT systems to FRNATs, an entity can qualify if they can work in partnership with other entities to support all federally recognized tribes in

all States, as long as the applicant will have ultimate control of the grant administration. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national organizations for the provision of Technical Assistance and training to Rural communities for the purpose of improving passenger transportation services or facilities.

3. *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4280.403.

4. *Application Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions in 7 CFR 4280, subpart E and as indicated in this notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2019 (amount to be determined).

Available Funds: Anyone interested in submitting an application for funding under this program is encouraged to consult the Rural Development Web Newsroom website at *http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas* for updated funding information.

Approximate Number of Awards: To be determined based on the number of qualified applications received. Historically two awards have been made.

Maximum Awards: Will be determined by the specific funding provided for the Program in the FY 2019 Appropriations Act. The Agency will publish any maximum award amount on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Award Date: Prior to September 30, 2019.

Performance Period: October 1, 2019, through September 30, 2020.

Renewal or Supplemental Awards: None.

C. Eligibility Information

1. *Eligible Applicants.*

To be considered eligible, an entity must be a qualified national organization serving Rural Areas as evidenced in its organizational documents and demonstrated experience, per 7 CFR part 4280, subpart E. Grants will be competitively awarded to qualified national organizations.

The Agency requires the following information to make an eligibility determination that an applicant is a national organization. These applications must include, but are not limited to, the following:

(a) An original and one copy of SF 424, ''Application for Federal Assistance (f or non-construction);''

(b) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(c) A proposed scope of work, including a description of the proposed Project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months for the duration of the Project, and the estimated time it will take from grant approval to beginning of Project implementation;

(d) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the Project is needed, the benefits of the proposed Project, and how the Project meets the grant eligible purposes;

(2) Area to be served, identifying each governmental unit, *i.e.,* tribe, town, county, etc., to be affected by the Project;

(3) Description of how the Project will coordinate Economic Development activities with other Economic Development activities within the Project area;

(4) Businesses to be assisted, if appropriate, and economic development to be accomplished;

(5) An explanation of how the proposed Project will result in newly created, increased, or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed Project assistance, including experience of key staff members and persons who will be providing the proposed Project activities and managing the Project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed, including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making a grant award determination.

(e) The latest 3 years of financial information to show the applicant's financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s), and cash flow statement(s). A current audited report is required if available;

(f) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from RBDG;

(g) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the Project.

2. *Cost Sharing or Matching.* Matching funds are not required.

3. *Other.*

Applications will only be accepted from qualified national organizations to provide Technical Assistance for RT. There are no ''responsiveness'' or ''threshold'' eligibility criteria for these grants. There is no limit on the number of applications an applicant may submit under this announcement. In addition to the forms listed under program description, Form AD–3030 ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' must be completed in the affirmative.

None of the funds made available may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

None of the funds made available may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

4. *Completeness Eligibility.*

Applications will not be considered for funding if they do not provide sufficient information to determine

eligibility or are missing required elements.

D. Application and Submission Information

1. *Address to Request Application Package.*

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

Prior to official submission of grant applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to May 16, 2019. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Applications must be submitted in paper format or electronic submission. If you want to submit an electronic application, follow the instructions for the RBDG funding announcement located at *http://www.grants.gov.* Please review the *Grants.gov* website for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. Applications submitted to a USDA Rural Development State Office must be received by the closing date and local time.

2. *Content and Form of Application Submission.*

You may submit your application in paper form or electronically through *Grants.gov*. Your application must contain all required information. If you submit in paper form, any forms requiring signatures must include an original signature.

To apply electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the CFDA number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov*, you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all of your application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

If you want to submit a paper application, send it to the State Office located in the State where the Project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.*

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Each selection priority criterion outlined in 7 CFR 4280.435 must be addressed in the application. Failure to address any of the criterion will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart E, will be provided to any interested applicant making a request to a USDA Rural Development State Office.

All Projects to receive Technical Assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple Project applications must identify each individual Project, indicate the amount of funding requested for each individual Project, and address the criteria as stated above for each individual Project.

For multiple-Project applications, the average of the individual Project scores will be the score for that application.

The applicant documentation and forms needed for a complete application are located in the Program Description section of this notice, and 7 CFR part 4280, subpart E.

(a) There are no specific formats, specific limitations on number of pages, font size and type face, margins, paper size, number of copies, and the sequence or assembly requirements.

(b) The component pieces of this application should contain original signatures on the original application.

(c) Since these grants are for Technical Assistance for transportation purposes, no additional information requirements other than those described in this notice and 7 CFR part 4280, subpart E are required.

3. *Unique entity identifier and System for Award Management.*

All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at (866) 705–5711 or at *http://fedgov.dnb.com/webform.* Each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from the requirements under 2 CFR 25.110(b) or (c) or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to: (i) Be registered in the System for Award Management (SAM) before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Deadline Date:* No later than 4:30 p.m. (local time) on June 25, 2019. *Electronic applications must be submitted via grants.gov no later by Midnight Eastern time on* June 25, 2019.

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the local deadline date and time as indicated above. If the due date falls on a Saturday, Sunday, or Federal holiday,

the application is due the next business day.

(b) The deadline date means that the completed application package must be received in the USDA Rural Development State Office by the deadline date established above. All application documents identified in this notice are required.

(c) If complete applications are not received by the deadline established above, the application will neither be reviewed nor considered under any circumstances.

(d) The Agency will determine the application receipt date based on the actual date postmarked.

(e) This notice is for RT Technical Assistance grants only and therefore, intergovernmental reviews are not required.

(f) These grants are for RT Technical Assistance grants only, no construction or equipment purchases are permitted. If the grantee has a previously approved indirect cost rate, it is permissible, otherwise, the applicant may elect to charge the 10 percent indirect cost permitted under 2 CFR 200.414(f) or request a determination of its Indirect Cost Rate. Due to the time required to evaluate Indirect Cost Rates, it is likely that all funds will be awarded by the time the Indirect Cost Rate is determined. No foreign travel is permitted. Pre-Federal award costs will only be permitted with prior written approval by the Agency.

(g) Applicants must submit applications in paper copy format or an electronic submission as previously indicated in the Application and Submission Information section of this notice. If the applicant wishes to hand deliver its application, the addresses for these deliveries can be located in the **ADDRESSES** section of this notice.

(h) If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

E. Application Review Information

1. *Criteria.*

All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4280.435 and will select grantees subject to the grantees' satisfactory submission of the additional items required by 7 CFR part 4280, subpart E and the USDA Rural Development Letter of Conditions. Failure to address any one of the criteria in 7 CFR 4280.435 by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding. The amount of an RT grant may be adjusted, at the Agency's discretion, to enable the Agency to award RT grants to the applications with the highest priority scores in each category.

2. *Review and Selection Process.*

The State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR 4280.416 and 4280.417. If determined eligible, your application will be submitted to the National Office. Funding of Projects is subject to the applicant's satisfactory submission of the additional items required by that subpart and the USDA Rural Development Letter of Conditions. The Agency reserves the right to award additional discretionary points under 7 CFR 4280.435(k).

In awarding discretionary points, the Agency scoring criteria regularly assigns points to applications that direct loans or grants to Projects based in or serving census tracts with poverty rates greater than or equal to 20 percent. This emphasis will support Rural Development's mission of improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.

F. Federal Award Administration Information

1. *Federal Award Notices.*

Successful applicants will receive notification for funding from their USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

2. *Administrative and National Policy Requirements.*

Additional requirements that apply to grantees selected for this program can be found in 7 CFR 4280.408, 4280.410, and 4280.439. Awards are subject to USDA Departmental Grant Regulations at 2 CFR Chapter IV which incorporates the new Office of Management and Budget (OMB) regulations at 2 CFR part 200.

All successful applicants will be notified by letter, which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance. If the applicant wishes to consider beginning performance prior to the grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency. The grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the Project.

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4280, subpart E; the Grants and Agreements regulations of the U.S. Department of Agriculture codified in 2 CFR Chapter IV, and successor regulations. In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for this program:

(a) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(f) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

(g) Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''

(h) Form AD–3030, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Must be signed by corporate applicants who receive an award under this notice.

(i) Form RD 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4 which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and other Agency regulations. That no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the recipient receives Federal financial assistance. That nondiscrimination statements are in advertisements and brochures.

Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice,

''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(j) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(k) Form SF 270, ''Request for Advance or Reimbursement.''

3. *Reporting.*

(a) A Financial Status Report and a Project performance activity report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. The grantee will complete the Project within the total time available to it in accordance with the Scope of Work and any necessary modifications thereof prepared by the grantee and approved by the Agency. A final Project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the grant if applicable. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The Project performance reports must include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall Project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(3) Objectives and timetable established for the next reporting period;

(4) Any special reporting requirements, such as jobs supported and created, businesses assisted, or Economic Development which results in improvements in median household incomes, and any other specific requirements, should be placed in the reporting section in the Letter of Conditions; and

(5) Within 90 days after the conclusion of the Project, the grantee will provide a final Project evaluation report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement on a monthly basis, the last 3 months of reimbursements will be withheld until a final Project, Project performance, and financial status report are received and approved by the Agency.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this notice.

H. Civil Rights Requirements

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570–0070.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.* Similarly, all applicants must be registered in SAM prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD 3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–05842 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for Socially-Disadvantaged Groups Grant Program.

DATES: Comments on this notice must be received by May 28, 2019 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by any of the following methods:

- *Mail:* Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW., STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: *Thomas.Dickson@wdc.usda.gov.*
- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

Title: Socially-Disadvantaged Groups Grant.

OMB Number: 0570–0052.

Expiration Date of Approval: August 31, 2019.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.0 hours per response.

Respondents: provide technical assistance to socially-disadvantaged groups through eligible cooperatives and cooperative development centers.

Estimated Number of Respondents: 36.

Estimated Number of Responses per Respondent: 16.5.

Estimated Number of Responses: 596.

Estimated Total Annual Burden on Respondents: 620 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center, at (202)772–1172, Email: *robin.m.jones@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–05843 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Community Development Initiative (RCDI) for Fiscal Year 2019

AGENCY: Rural Housing Service, Department of Agriculture.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Housing Service (Agency), an Agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Rural Community Development Initiative (RCDI) program. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development that will support the community.

This Notice announces that the Agency is accepting fiscal year (FY) 2019 applications for the RCDI program. Successful applications will be selected by the Agency for funding and subsequently awarded from funds appropriated for the RCDI program. The Agency will publish the amount of funding on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

DATES: Completed applications must be submitted on paper or electronically according to the following deadlines:

The Agency must receive a paper application by 4:00 p.m. local time, June 10, 2019. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on June 5, 2019. The application dates and times are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted.

ADDRESSES: Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI website: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

Application information for electronic submissions may be found at *http://www.grants.gov.*

Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development State offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

See under **SUPPLEMENTARY INFORMATION**: The Rural Development office for the state in which the applicant is located. A list of Rural

Development State Office contacts is provided at the following link: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

SUPPLEMENTARY INFORMATION: The Agency encourages applications that will support the Agency's overall goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address one or more of the following focus areas at the community, county, state, and/or regional levels:

- Prevention: Reducing the occurrence of Substance Use Disorder (including opioid misuse) among new and at-risk users as well as fatal substance-related overdoses through community and provider education, and harm reduction measures including the strategic placement of overdose reversing devices, such as naloxone;
- Treatment: Implementing or expanding access to evidence-based practices for Substance Use Disorder (including opioid misuse) treatment such as medication-assisted treatment (MAT); and
- Recovery: Expanding peer recovery and treatment options that help people start and stay in recovery.

Administrator discretionary points will be awarded to applications that address this Agency Goal.

The Agency encourages applications that will help improve life in rural America. (See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.)* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Notice of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Dates: The deadline for receipt of a paper application is 4 p.m. local time, June 10, 2019. The deadline for receipt of an electronic applications via *grants.gov* is Midnight Eastern time on June 5, 2019. The application dates and times are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail and postage due applications will not be accepted. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to May 31, 2019. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

A. Program Description

Congress first authorized the RCDI in 1999 (Pub. L. 106–78, which was amended most recently by the Consolidated Appropriations Act, 2018 (Pub. L. 115–141) to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and federally recognized Native American Tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries).

B. Federal Award Information

The Agency will publish the amount of funding received in the FY 2019 Appropriations Act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Qualified private organizations, nonprofit organizations and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the grant funding.

The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant.

A grant will be the type of assistance instrument awarded to successful applications.

The respective minimum and maximum grant amount per intermediary is $50,000 and $250,000.

Grant funds must be utilized within 3 years from date of the award.

A grantee that has an outstanding RCDI grant over 3 years old, as of the application due date in this Notice, is not eligible to apply for this round of funding.

The intermediary must provide a program of financial and technical assistance to one or more of the following: A private, nonprofit community-based housing and development organization, a low-income rural community or a federally recognized tribe.

(a) Restrictions substantially similar to Sections 743, 744, 745, and 746 outlined in Title VII, ''General Provisions—Government-Wide'' of the Consolidated Appropriations Act, 2018 (Pub. L. 115–141) will apply unless noted on the rural development website. Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. In addition, none of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law

enforcement representative of a Federal department or agency authorized to receive such information. Additionally, no funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: ''These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.

(b) A nondisclosure agreement may continue to be implemented and enforced notwithstanding subsection (a) if it complies with the requirements for such agreement that were in effect when the agreement was entered into.

(c) No funds appropriated in this or any other Act may be used to implement or enforce any agreement entered into during fiscal year 2014 which does not contain substantially similar language to that required in subsection (a).''

C. Eligibility Information

Applicants must meet all of the following eligibility requirements by the application deadline. Applications which fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further and will not receive a Federal award.

1. Eligible Applicants

(a) Qualified private organizations, nonprofit organizations (including faith-based and community organizations and philanthropic foundations), in accordance with 7 CFR part 16, and public (including tribal) intermediary organizations are eligible applicants. Definitions that describe eligible organizations and other key terms are listed below.

(b) The recipient must be a nonprofit community-based housing and development organization, low-income rural community, or federally recognized tribe based on the RCDI definitions of these groups.

(c) Private nonprofit, faith or community-based organizations must provide a certificate of incorporation and good standing from the Secretary of the State of incorporation, or other similar and valid documentation of current nonprofit status. For low-income rural community recipients, the Agency requires evidence that the entity is a public body and census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income, whichever is higher. For federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes in this Notice for details on this list).

(d) Any corporation that:

(1) Has been convicted of a felony criminal violation under any Federal law within the past 24 months; or

(2) has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; is not eligible for financial assistance provided with full-year appropriated funds for Fiscal Year 2019, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

2. Cost Sharing or Matching

There is a matching requirement of at least equal to the amount of the grant. If this matching fund requirement is not met, the application will be deemed ineligible. See section D, Application and Submission Information, for required pre-award and post award matching funds documentation submission.

Matching funds are cash or confirmed funding commitments that must be at least equal to the grant amount and committed for a period of not less than the grant performance period. These funds can only be used for eligible RCDI activities and must be used to support the overall purpose of the RCDI program.

In-kind contributions such as salaries, donated time and effort, real and nonexpendable personal property and goods and services cannot be used as matching funds.

Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item.

The request for advance or reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used.

Grant funds will be disbursed pursuant to relevant provisions of 2 CFR parts 200 and 400. See Section D, Application and Submission Information, for matching funds documentation and pre-award requirements.

The intermediary is responsible for demonstrating that matching funds are available and committed for a period of not less than the grant performance period to the RCDI proposal. Matching funds may be provided by the intermediary or a third party. Other Federal funds may be used as matching funds if authorized by statute and the purpose of the funds is an eligible RCDI purpose.

RCDI funds will be disbursed on an advance or reimbursement basis. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement.

3. Other Program Requirements

(a) The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The physical location of the recipient's office that will be receiving the financial and technical assistance must be in an eligible rural area. If the recipient is a low-income community, the median household income of the area where the office is located must be at or below 80 percent of the State or national median household income, whichever is higher. The applicable Rural Development State Office can assist in determining the eligibility of an area.

A listing of Rural Development State Office contacts can be found at the following link: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* A map showing eligible rural areas can be found at the following link: *http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=RBSmenu&NavKey=property@13.*

(b) RCDI grantees that have an outstanding grant over 3 years old, as of the application due date in this Notice, will not be eligible to apply for this round of funding. Grant and matching funds must be utilized in a timely manner to ensure that the goals and objectives of the program are met.

(c) Individuals cannot be recipients.

(d) The intermediary must provide a program of financial and technical assistance to the recipient.

(e) The intermediary organization must have been legally organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based housing and development organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

(f) Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

(g) Each applicant, whether singularly or jointly, may only submit one application for RCDI funds under this Notice. This restriction does not preclude the applicant from providing matching funds for other applications.

(h) Recipients can benefit from more than one RCDI application; however, after grant selections are made, the recipient can only benefit from multiple RCDI grants if the type of financial and technical assistance the recipient will receive is not duplicative. The services described in multiple RCDI grant applications must have separate and identifiable accounts for compliance purposes.

(i) The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient, provided the relationship does not create a Conflict of Interest that cannot be resolved to Rural Development's satisfaction.

(j) If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.,* town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

4. Eligible Grant Purposes

Fund uses must be consistent with the RCDI purpose. A nonexclusive list of eligible grant uses includes the following:

(a) Provide technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, *e.g.,* the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the technical assistance provided by the intermediary.

(b) Develop the capacity of recipients to conduct community development programs, *e.g.,* homeownership education or training for business entrepreneurs.

(c) Develop the capacity of recipients to conduct development initiatives, *e.g.,* programs that support micro-enterprise and sustainable development.

(d) Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

(e) Develop the capacity of recipients to provide the technical assistance component for essential community facilities projects.

(f) Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.,* architectural, engineering, or legal.

(g) Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

(h) Purchase of computers, software, and printers, limited to $10,000 per award, at the recipient level when directly related to the technical assistance program being undertaken by the intermediary.

(i) Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

5. Ineligible Fund Uses

The following is a list of ineligible grant uses:

(a) Pass-through grants, and any funds provided to the recipient in a lump sum that are not reimbursements.

(b) Funding a revolving loan fund (RLF).

(c) Construction (in any form).

(d) Salaries for positions involved in construction, renovations, rehabilitation, and any oversight of these types of activities.

(e) Intermediary preparation of strategic plans for recipients.

(f) Funding prostitution, gambling, or any illegal activities.

(g) Grants to individuals.

(h) Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

(i) Paying obligations incurred before the beginning date without prior Agency approval or after the ending date of the grant agreement.

(j) Purchasing real estate.

(k) Improvement or renovation of the grantee's or recipient's office space or for the repair or maintenance of privately owned vehicles.

(l) Any purpose prohibited in 2 CFR part 200 or 400.

(m) Using funds for recipient's general operating costs.

(n) Using grant or matching funds for Individual Development Accounts.

(o) Purchasing vehicles.

6. Program Examples and Restrictions

The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objectives of the RCDI program and meet the criteria outlined in this Notice will be considered eligible.)

(a) The intermediary must work directly with the recipient, not the ultimate beneficiaries. As an example:

The intermediary provides training and technical assistance to the recipients on developing and updating materials related to the prevention, treatment and recovery activities for opioid use disorder and ensure that high-quality training is provided to communities affected by the opioid epidemic.

(b) The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public.

This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

(c) If the intermediary is working with a low-income community as the recipient, the intermediary must provide the technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council.

If the intermediary provides technical assistance to the Board of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose.

The recipient's capacity is built by learning skills that will enable them to support sustainable economic

development in their communities on an ongoing basis.

(d) The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund. The intermediary may not monitor or operate the revolving loan fund. RCDI funds, including matching funds, cannot be used to fund revolving loan funds.

(e) The intermediary may work with recipients in building their capacity to provide planning and leadership development training. The recipients of this training would be expected to assume leadership roles in the development and execution of regional strategic plans. The intermediary would work with multiple recipients in helping communities recognize their connections to the greater regional and national economies.

(f) The intermediary could provide training and technical assistance to the recipients on developing emergency shelter and feeding, short-term housing, search and rescue, and environmental accident, prevention, and cleanup program plans. For longer term disaster and economic crisis responses, the intermediary could work with the recipients to develop job placement and training programs and develop coordinated transit systems for displaced workers.

D. Application and Submission Information

1. Address To Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI website: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

Application information for electronic submissions may be found at *http://www.grants.gov.*

Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development State office contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* You may also obtain a copy by calling 202–205–9685.

2. Content and Form of Application Submission

If the applicant is ineligible or the application is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

A complete application for RCDI funds must include the following:

(a) A summary page, double-spaced between items, listing the following: (This information should not be presented in narrative form.)

(1) Applicant's name,

(2) Applicant's address,

(3) Applicant's telephone number,

(4) Name of applicant's contact person, email address and telephone number,

(5) County where applicant is located,

(6) Congressional district number where applicant is located,

(7) Amount of grant request, and

(8) Number of recipients.

(b) A detailed Table of Contents containing page numbers for each component of the application.

(c) A project overview, no longer than one page, including the following items, which will also be addressed separately and in detail under ''Building Capacity and Expertise'' of the ''Evaluation Criteria.''

(1) The type of technical assistance to be provided to the recipients and how it will be implemented.

(2) How the capacity and ability of the recipients will be improved.

(3) The overall goals to be accomplished.

(4) The benchmarks to be used to measure the success of the program. Benchmarks should be specific and quantifiable.

(d) Organizational documents, such as a certificate of incorporation and a current good standing certification from the Secretary of State where the applicant is incorporated and other similar and valid documentation of current non-profit status, from the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

(e) Verification of source and amount of matching funds, *e.g.,* a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source.

The verification must show that matching funds are available for the duration of the grant performance period. The verification of matching funds must be submitted with the application or the application will be considered incomplete.

The applicant will be contacted by the Agency prior to grant award to verify that the matching funds provided with the application continue to be available. The applicant will have 15 days from the date contacted to submit verification that matching funds continue to be available.

If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible. The applicant must maintain bank statements on file or other documentation for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved.

(f) The following information for each recipient:

(1) Recipient's entity name,

(2) Complete address (mailing and physical location, if different),

(3) County where located,

(4) Number of Congressional district where recipient is located,

(5) Contact person's name, email address and telephone number and,

(6) Form RD 400–4, ''Assurance Agreement.'' If the Form RD 400–4 is not submitted for the applicant and each recipient, the recipient will be considered ineligible. No information pertaining to that recipient will be included in the income or population scoring criteria and the requested funding may be adjusted due to the deletion of the recipient.

(g) Submit evidence that each recipient entity is eligible. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient:

(1) Nonprofits—provide a current valid letter confirming non-profit status from the Secretary of the State of incorporation, a current good standing certification from the Secretary of the State of incorporation, or other valid documentation of current nonprofit status of each recipient.

A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

(2) Low-income rural community—provide evidence the entity is a public body (copy of Charter, relevant Acts of Assembly, relevant court orders (if created judicially) or other valid documentation), a copy of the 2010 census data to verify the population, and 2010 American Community Survey (ACS) 5-year estimates (2006–2010 data set) data as evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data and printouts from *http://www.census.gov.*

(3) Federally recognized tribes—provide the page listing their name from the **Federal Register** list of tribal entities published most recently by the Bureau of Indian Affairs. The 2018 list is available at 83 FR 34863 pages 34863–

34868 and *https://www.gpo.gov/fdsys/pkg/FR-2018-07-23/pdf/2018-15679.pdf.* For Tribes that received federal recognition after the most recent publication, statutory citations and additional documentation may suffice.

(h) Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Narrative (not including attachments) must be limited to five pages per criterion. The ''Population and Income'' criteria for recipient locations can be provided in the form of a list; however, the source of the data must be included on the page(s).

(i) A timeline identifying specific activities and proposed dates for completion.

(j) A detailed project budget that includes the RCDI grant amount and matching funds. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included. The budget should be dated: Year 1, year 2, and year 3, as applicable.

(k) The indirect cost category in the project budget should be used only when a grant applicant has a federally negotiated indirect cost rate. A copy of the current rate agreement must be provided with the application. Non-federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B), may use the de minimis rate of 10 percent of modified total direct costs (MTDC).

(l) Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in Letter (j) of this section.)

(m) Form SF–424B, ''Assurances—Non-Construction Programs.''

(n) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

(o) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

(p) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

(q) Certification of Non-Lobbying Activities.

(r) Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(s) Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient. The applicant and each prospective recipient must sign Form RD 400–4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and other Agency regulations: That no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the recipient receives Federal financial assistance; That nondiscrimination statements are in advertisements and brochures.

Applicants must collect and maintain data provided by recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(t) Identify and report any association or relationship with Rural Development employees. (A statement acknowledging whether or not a relationship exists is required.)

(u) Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' if you are a corporation. A corporation is any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands, or the various territories of the United States including American Samoa, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. Corporations include both for profit and non-profit entities.

3. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://*

www.sam.gov or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding. The required forms and certifications can be downloaded from the RCDI website at: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

4. Submission Dates and Times

The deadline for receipt of a paper application is 4 p.m. local time, June 10, 2019. The deadline for electronic applications via *grants.gov* is Midnight Eastern time on June 5, 2019. The application dates and times are firm. The Agency will not consider any application received after the deadline. You may submit your application in paper form or electronically through *Grants.gov*. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted.

To submit a paper application, the original application package must be submitted to the Rural Development State Office where the applicant's headquarters is located.

A listing of Rural Development State Offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

Applications will not be accepted via FAX or electronic mail.

Applicants may file an electronic application at *http://www.grants.gov. Grants.gov* contains full instructions on all required passwords, credentialing, and software. Follow the instructions at *Grants.gov* for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the *Grants.gov* website.

Technical difficulties submitting an application through *Grants.gov* will not be a reason to extend the application deadline. If an application is unable to be submitted through *Grants.gov*, a paper application must be received in the appropriate Rural Development State Office by the deadline noted previously.

First time *Grants.gov* users should carefully read and follow the registration steps listed on the website. These steps need to be initiated early in the application process to avoid delays in submitting your application online.

In order to register with System for Award Management (SAM), your organization will need a DUNS number. Be sure to complete the Marketing Partner ID (MPID) and Electronic Business Primary Point of Contact fields during the SAM registration process.

These are mandatory fields that are required when submitting grant applications through *Grants.gov*. Additional application instructions for submitting an electronic application can be found by selecting this funding opportunity on *Grants.gov*.

5. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may, however, be used to pay for these expenses.

RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting.

RCDI funds cannot be used for meetings; they can, however, be used for travel, transportation, or subsistence expenses for program-related training and technical assistance purposes. Any training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses (including meals and incidental expenses) will be allowed in accordance with 2 CFR parts 200 and 400.

E. Application Review Information

1. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

(a) Building Capacity and Expertise—Maximum 40 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes.

Capacity-building financial and technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. Capacity-building financial and technical assistance may include, but is not limited to: Training to conduct community development programs, *e.g.,* homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.,* assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.,* hiring a person at intermediary or recipient level to provide technical assistance to recipients.

The program of financial and technical assistance that is to be provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application.

All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest.

The narrative response must contain the following items. This list also contains the points for each item.

(1) Describe the nature of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the technical assistance; (10 Points)

(2) Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively; (7 Points)

(3) Identify which RCDI purpose areas will be addressed with this assistance: Housing, community facilities, or community and economic development; (3 Points)

(4) Describe how the results of the technical assistance will be measured. What benchmarks will be used to measure effectiveness? Benchmarks should be specific and quantifiable; (5 Points)

(5) Demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. (10 Points)

(6) Provide in a chart or excel spreadsheet, the organization name, point of contact, address, phone number, email address, and the type and amount of the financial and technical assistance the applicant

organization has provided to the following for the last 3 years: (5 Points)

(i) Nonprofit organizations in rural areas.

(ii) Low-income communities in rural areas (also include the type of entity, *e.g.,* city government, town council, or village board).

(iii) Federally recognized tribes or any other culturally diverse organizations.

(b) Soundness of Approach—Maximum 15 Points

The applicant can receive up to 15 points for soundness of approach. The overall proposal will be considered under this criterion.

Applicants must list the page numbers in the application that address these factors.

The maximum 15 points for this criterion will be based on the following:

(1) The proposal fits the objectives for which applications were invited, is clearly stated, and the applicant has defined how this proposal will be implemented. (7 Points)

(2) The ability to provide the proposed financial and technical assistance based on prior accomplishments. (6 Points)

(3) Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level. (2 Points)

(c) Population and Income—Maximum 15 Points

Population is based on the average population from the 2010 census data for the communities in which the recipients are located. The physical address, not mailing address, for each recipient must be used for this criterion. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's office is physically located.

The applicant must submit the census data from the following website in the form of a printout of the applicable ''Fact Sheet'' to verify the population figures used for each recipient. The data can be accessed on the internet at *http://www.census.gov;* click on ''American FactFinder,'' fill in field and click ''Go''; the name and population data for each recipient location must be listed in this section.

The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
10,000 or less	5
10,001 to 20,000	4
20,001 to 30,000	3
30,001 to 40,000	2
40,001 to 50,000	1

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. The physical address, not mailing address, for each recipient must be used for this criterion. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $51,914.

The applicant must submit the income data in the form of a printout of the applicable information from the following website to verify the income for each recipient. The data being used is from the 2010 American Community Survey (ACS) 5-year estimates (2006—2010 data set). The data can be accessed on the internet at *https://factfinder.census.gov;* click on ''Advanced Search,''(click on ''Show Me All'' tab), ''Topics,'' ''Dataset,'' locate 2010 ACS 5 year estimates, close table, check the ''Median Income'' table (S1903 on page 2), fill in the ''state, county or place'' field (at top of page), select ''Go'' and click ''View''; the name and income data for each recipient location must be listed in this section (use the Household and Median Income column). Points will be awarded as follows:

Average recipient median income	Scoring (points)
Less than or equal to 70 percent of state or national median household income	10
Greater than 70, but less than or equal to 80 percent of state or national median household income	5
In excess of 80 percent of state or national median household Income	0

(d) State Director's Points Based on Project Merit—Maximum 10 Points

(1) This criterion will be addressed by the Agency, not the applicant.

(2) Up to 10 points may be awarded by the Rural Development State Director to any application(s) that benefits their State regardless of whether the applicant is headquartered in their State. The total points awarded under this criterion, to all applications, will not exceed 10.

(3) When an intermediary submits an application that will benefit a State that is not the same as the State in which the intermediary is headquartered, it is the intermediary's responsibility to notify the State Director of the State which is receiving the benefit of their application. In such cases, State Directors awarding points to applications benefiting their state must notify the reviewing State in writing.

(4) Assignment of any points under this criterion requires a written justification and must be tied to and awarded based on how closely the application aligns with the Rural Development State Office's strategic goals.

(e) Administrator Discretionary Points—Maximum 20 Points

The Administrator may award up to 20 discretionary points for projects to address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary.

The Administrator will award points to any application that supports the Agency's overall goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address one or more of the following focus areas at the community, county, state, and/or regional levels: 1. Prevention: Reducing the occurrence of Substance Use Disorder (including opioid misuse) among new and at-risk users as well as fatal substance-related overdoses through community and provider education, and harm reduction measures including the strategic placement of overdose reversing devices, such as naloxone; 2. Treatment: Implementing or expanding access to evidence-based practices for Substance Use Disorder (including opioid misuse) treatment such as medication-assisted treatment (MAT); and 3. Recovery: expanding peer recovery and treatment options that help people start and stay in recovery.

2. Review and Selection Process

(a) Rating and ranking.

Applications will be rated and ranked on a national basis by a review panel based on the ''Evaluation Criteria'' contained in this Notice.

If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity and Expertise'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity and Expertise'' are the same, the scores will be compared for the next criterion, in

sequential order, until one highest score can be determined.

(b) Initial screening.

The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are examples of reasons for rejection from previous funding rounds. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

(1) Recipients were not located in eligible rural areas based on the definition in this Notice.

(2) Applicants failed to provide evidence of recipient's status, *i.e.,* documentation supporting nonprofit evidence of organization.

(3) Applicants failed to provide evidence of committed matching funds or matching funds were not committed for a period at least equal to the grant performance period.

(4) Application did not follow the RCDI structure with an intermediary and recipients.

(5) Recipients were not identified in the application.

(6) Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

(7) Applicants failed to address the ''Evaluation Criteria.''

(8) The purpose of the proposal did not qualify as an eligible RCDI purpose.

(9) Inappropriate use of funds (*e.g.,* construction or renovations).

(10) The applicant proposed providing financial and technical assistance directly to individuals.

(11) The application package was not received by closing date and time.

F. Federal Award Administration Information

1. Federal Award Notice

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice.

Successful applicants will receive a selection letter by mail containing instructions on requirements necessary to proceed with execution and performance of the award.

This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award obligation date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful applicants will receive notification including appeal rights by mail.

2. Administrative and National Policy Requirements

Grantees will be required to do the following:

(a) Execute a Rural Community Development Initiative Grant Agreement.

(b) Execute Form RD 1940–1, ''Request for Obligation of Funds.''

(c) Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements. Provide receipts for expenditures, timesheets and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

(g) Provide annual audits or management reports on Form RD 442–2, ''Statement of Budget, Income and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

(h) Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(i) Provide a final project performance report.

(j) Identify and report any association or relationship with Rural Development employees.

(k) The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 12250, Age Act of 1975, Executive Order 13166 Limited English Proficiency, and 7 CFR part 1901, subpart E.

(l) The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(i) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards).

(ii) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

(m) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants,'' must be signed by corporate applicants who receive an award under this Notice.

3. Reporting

After grant approval and through grant completion, you will be required to provide the following, as indicated in the Grant Agreement:

(a) SF–425, ''Federal Financial Report'' and SF–PPR, ''Performance Progress Report'' will be required on a quarterly basis (due 30 working days after each calendar quarter). The Performance Progress Report shall include the elements described in the grant agreement.

(b) Final financial and performance reports will be due 90 calendar days after the period of performance end date.

(c) A summary at the end of the final report with elements as described in the grant agreement to assist in documenting the annual performance goals of the RCDI program for Congress.

G. Federal Awarding Agency Contact

Contact the Rural Development office in the State where the applicant's headquarters is located. A list of Rural Development State Offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

H. Other Information

Survey on Ensuring Equal Opportunity for Applicants, OMB No. 1894–0010 (applies to nonprofit applicants only—submission is optional).

No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the intermediary is a non-profit or educational entity and has requested and received written Agency approval of the costs prior to the actual expenditure.

This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received

written approval but have not executed the RCDI Grant Agreement.

The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

Program Definitions

Agency—The Rural Housing Service or its successor.

Beneficiary—Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—The ability of a recipient to implement housing, community facilities, or community and economic development projects.

Conflict of interest— A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of conflict of interest occurs when the grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Federally recognized tribes—Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the most recent notice in the **Federal Register** published by the Bureau of Indian Affairs and Tribes that received federal recognition after the most recent publication. Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds, not to exceed $10,000 per award, used by the intermediary to purchase supplies and equipment to build the recipient's capacity.

Funds—The RCDI grant and matching money.

Intermediary—A qualified private organization, nonprofit organization (including faith-based and community organizations and philanthropic organizations), or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—An authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough whose income is at or below 80 percent of either the state or national Median Household Income as measured by the 2010 Census.

Matching funds—Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount and committed for a period of not less than the grant performance period.

Recipient—The entity that receives the financial and technical assistance from the Intermediary. The recipient must be a nonprofit community-based housing and development organization, a low-income rural community or a federally recognized Tribe.

Rural and rural area—Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

Technical assistance—Skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Persons With Disabilities

Individuals who are deaf, hard of hearing, or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email.

If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–05836 Filed 3–26–19; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–03–2019]

Approval of Subzone Status; Fender Musical Instruments Corporation; San Bernardino and Corona, California

On January 31, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port of Long Beach, grantee of FTZ 50, requesting subzone status subject to the existing activation limit of FTZ 50, on behalf of Fender Musical Instruments Corporation, in San Bernardino and Corona, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 2156, February 6, 2019). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 50U was approved on March 20, 2019, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 50's 2,000-acre activation limit.

Dated: March 21, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–05869 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board (B–17–2019)

Foreign-Trade Zone (FTZ) 203—Moses Lake, Washington; Notification of Proposed Production Activity; Framatome, Inc. (Fuel Rod Subassemblies); Richland, Washington

Framatome, Inc. (Framatome) submitted a notification of proposed production activity to the FTZ Board for its facility in Richland, Washington. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 6, 2019.

Framatome (approved as AREVA, Inc.) already has authority to produce fuel rod assemblies within Site 4 of FTZ 203. The current request would add a finished product and a foreign-status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Framatome from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Framatome would be able to choose the duty rate during customs entry procedures that applies to fuel rod subassemblies (duty rate 3.3%). Framatome 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 material/component sourced from abroad is stainless steel billets (duty-free). The request indicates that the stainless steel billets are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 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 Diane Finver at Diane.Finver@trade.gov or (202) 482–1367.

Dated: March 21, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–05868 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity To Apply for Federal Recognition of, or Federal Participation in, Upcoming International Expositions

AGENCY: Office of the Trade Promotion Coordinating Committee, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce, Office of the Trade Promotion Coordinating Committee, is publishing this notice to inform the public of the upcoming schedule of International Expositions overseen by the Bureau of International Expositions (BIE), including when the BIE may accept applications from the United States Government on behalf of U.S.-based candidates; and to inform the public of the rules for applying for United States Government recognition of, or participation in, International Expositions proposed to be held in the United States.

ADDRESSES: Applications to receive Federal recognition of, or Federal participation in, an International Exposition proposed to be held in the United States should be submitted to the Office of the Trade Promotion Coordinating Committee, International Trade Administration, U.S. Department of Commerce, Room 31027, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Patrick Kirwan, Director, Office of the Trade Promotion Coordinating Committee, International Trade Administration, Department of Commerce, by telephone at (202) 482–5455 (this is not a toll-free number) or email at *Patrick.Kirwan@trade.gov.*

SUPPLEMENTARY INFORMATION: Since May 10, 2017, the United States has been a member of the BIE. The United States rejoined the BIE consistent with the U.S. Wants to Compete for a World Expo Act (22 U.S.C. 2452b, 131 Stat. 843, Pub. L. 115–32). The BIE is a Paris-based intergovernmental organization created in 1928 by the Convention Relating to International Exhibitions (Convention) that oversees and regulates International Expositions that last more than three weeks and are of a noncommercial nature (Expos). The BIE selects the host sites for future Expos; provides candidates and host countries with its expertise in event management, national branding and public diplomacy; regulates the organization of the event; and ensures that the host country and all participants respect the Convention

and BIE rules, as well as the guidelines established for each Expo.

Under the BIE, Expos are global events organized and facilitated by governments that serve to educate the public, share innovation, promote progress, and foster cooperation. The BIE oversees four types of Expos: World Expos (also known as registered exhibitions), Specialized Expos (also known as recognized exhibitions), Horticultural Expos, and the Triennale di Milano.

The BIE accepts World Expo applications starting up to nine years before, and as late as six years before, the proposed opening date of the World Expo. For Specialized Expos, the BIE accepts applications starting up to six years before, and as late as five years before, the proposed opening date of the Specialized Expo. Accordingly, the BIE will accept applications for a World Expo to be held in 2030 (''the 2030 World Expo'') and for a Specialized Expo to be held in 2027/2028 (''the 2027/2028 Specialized Expo'') starting on January 1, 2021. Potential hosts could campaign for both Expos simultaneously. The BIE requires there to be at least 15 years between any two Expos organized in the same country.

After one country has submitted an application for a particular World Expo or Specialized Expo, any other government wishing to organize an Expo for the same period has six months to submit its own application to the BIE. The BIE's rules provide that, at the end of the six-month period following the submission of the first application for a particular Expo, all candidates must present a full bid dossier based on specifications to be defined by the BIE. BIE Enquiry Missions will use these bid dossiers as the basis for their work in evaluating candidate countries. The Enquiry Missions will assess the feasibility and viability of the proposed Expo, the political and social climate of the candidate city and country, and the support of the government for the Expo. They also will consider the proposed theme of the Expo; the Expo's date, duration, and location; the area of the Expo site; the number of expected visitors; the proposed measures to ensure financial feasibility and financial guarantees; the indicators that will allow the evaluation of the participation costs for countries and the proposed financial and material provisions to minimize this cost; the attitude of relevant authorities and interested parties; citizens' support; the environmental impact of the Expo; and plans for the communication and promotion of the Expo. Additional information regarding the BIE is available at *https://www.bie-paris.org/site/en/.*

Under the BIE's rules, the U.S. Government must submit an application to the BIE for any Expo proposed to be held in the United States, even if the U.S. Government is not the organizer of that Expo. Before the U.S. Government may submit an application to the BIE, it first must recognize the Expo in accordance with 22 U.S.C. Chapter 40 and 15 CFR part 310.

Organizers of an Expo proposed to be held in the United States may include cities, municipalities, non-profit organizations, chambers of commerce, and other entities. The organizer of an Expo must submit an application for Federal recognition to the Secretary of Commerce. Applications for Federal recognition of an Expo must comply with, and include all exhibits as detailed in, 15 CFR 310.3. These exhibits include, among others, an Expo plan that sets forth the theme of the Expo, the preliminary architectural and design plans, and the proposed BIE category of the Expo; documentary evidence of State, regional, and local support; a study conducted by a nationally recognized firm that details certain financial information for the Expo; and a statement setting forth the public relations, publicity and other promotional plans for the Expo.

The process for being selected by the BIE is a competitive process with countries campaigning for votes well in advance of the official application date of January 1, 2021. It is expected that campaigning will start in earnest at the World's Expo 2020 to be held in Dubai from October 20, 2020, to April 10, 2021. To help increase the likelihood of a U.S. site being selected, the Department of Commerce encourages potential bidders to submit completed bids as soon as possible, ideally by October 1, 2019, and be prepared to compete vigorously starting in Spring 2020. The Secretary of Commerce will consider all applications seeking federal recognition of, and federal participation in, an Expo proposed to be held in the United States until the President grants federal recognition to an Expo for the same time period. At that time, the Secretary will cease consideration of any Expo proposed to be held in the United States during the same time period.

If an Expo is recognized by the U.S. Government, the President may, among other measures, present an official request by the United States to the BIE for registration of the Expo by the BIE; fulfill the requirements of the Convention; and extend invitations to the states and to foreign governments to take part in the Expo. Organizers of a proposed Expo should understand that, under the BIE's rules, if the U.S. Government recognizes a candidacy for 2030 World Expo or a 2027/2028 Specialized Expo to be held in the United States, and the BIE subsequently selects the U.S. Government's application for that Expo, the U.S. Government will be unable to support any other Expo, regardless of its type, that is proposed to be held in the United States within the 15-year period following the Expo selected by the BIE.

In addition to applying for Federal recognition of a proposed Expo, the Expo organizer may apply for Federal participation of that Expo. Applications for Federal participation of an Expo must comply with 15 CFR 310.7, including the submission of a statement that outlines the nature of the Federal participation envisioned. If the Expo organizer requests the construction of a Federal pavilion, it also must submit with its application the exhibits detailed in 15 CFR 310.7, including a survey drawing of the proposed Federal pavilion site. The President may submit to Congress a proposal for Federal participation in an Expo only after the U.S. Government has recognized that Expo and after the BIE has registered that Expo. Expo organizers are encouraged to apply for Federal participation in an Expo at the same time that they apply for Federal recognition of that Expo, but may apply for Federal participation after the Expo has been recognized by the U.S. Government or after the Expo has been registered by the BIE.

Applications for Federal recognition of, or Federal participation in, an Expo proposed to be held in the United States will be reviewed in accordance with the procedures set forth in 22 U.S.C. Chapter 40 and 15 CFR part 310.

Dated: February 21, 2019.

Pat Kirwan,

Director, Trade Promotion Coordinating Committee.

[FR Doc. 2019–05779 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on oil country tubular goods (OCTG) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2016, through December 31, 2016. We have determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), the only mandatory respondent, received countervailable subsidies during the POR.

DATES: Applicable March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2018, Commerce published the *Preliminary Results* of this CVD administrative review in the **Federal Register.**[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce exercised its discretion to toll deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] Accordingly, the revised deadline for the final results of this review is now March 20, 2019.

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50. The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

The issues raised by Maverick Tube Corporation and TenarisBayCity (the domestic interested parties), the Government of Turkey (GOT), and Borusan are addressed in the Issues and Decision Memorandum.[5] A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov;* the Issues and Decision Memorandum is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable during the POR, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rate for Borusan, for the period January 1, 2016, through December 31, 2016:

Company	Subsidy rate (percent *ad valorem*)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S[7]	0.66

[1] *See Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016,* 83 FR 51440 (October 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review of Oil Country Tubular Goods from the Republic of Turkey; 2016,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at 2–3.

[3] *See* memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Issues and Decision Memorandum at 2–3.

[5] *Id.* at 6–12.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[7] As discussed in the Issues and Decision Memorandum, Commerce has found the following company to be cross-owned with Borusan: Borusan Istikbal Ticaret.

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review, to liquidate shipments of subject merchandise produced by and/or exported by Borusan, entered, or withdrawn from warehouse, for consumption on or after January 1, 2016, through December 31, 2016, at the *ad valorem* rate listed above.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Borusan, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 22, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Scope of the Order
III. Subsidies Valuation Information
IV. Benchmark Interest Rates
V. Analysis of Programs
VI. Analysis of Comments
Comment 1: Using Production Data Provided by the Government of Turkey (GOT) in Analysis of Market Distortion
Comment 2: The Appropriate Methodology to Calculate a 'Tier 2' Benchmark
Comment 3: Whether to Place the Verification Report from the Large Diameter Welded Pipe from Turkey Investigation on this Case Record
VII. Recommendation

[FR Doc. 2019–05867 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these results of review.

DATES: Applicable March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947or (202) 482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2018, Commerce published the *Preliminary Results* of this administrative review.[1] For the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the Taiwan nails decision is now March 15, 2019. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). This review covers the following producers/exporters of subject merchandise: Bonuts Hardware Logistic Co., Ltd. (Bonuts); PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc. (PT/Pro-Team); and Unicatch Industrial Co. Ltd. (Unicatch).

Scope of the Order

The merchandise covered by this order is certain steel nails. The certain steel nails subject to the order are currently classifiable under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purpose, the written description is dispositive.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, can be found at the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to

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[1] *See Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2016–2017*, 83 FR 39675 (August 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Taiwan'' (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] A full description of the scope of the order is contained in the Issues and Decision Memorandum.

registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the *Preliminary Results.* Specifically, we made adjustments to the constructed value calculation and the antidumping margin programs for PT/Pro-Team and Unicatch for these final results. For a full discussion of these changes, *see* the Issues and Decision Memorandum.

Application of Facts Available and Adverse Facts Available

We continue to find that Bonuts failed to cooperate to the best of its ability in responding to Commerce's requests for information. Thus, we find that the application of adverse facts available, pursuant to section 776(a)–(b) of the Act, is warranted with respect to Bonuts. For a full description of the methodology and rationale underlying our conclusions, *see* Issues and Decision Memorandum.

Duty Absorption

In the *Preliminary Results,* Commerce made a preliminary determination to not examine duty absorption for PT/Pro-Team's and Unicatch's export price (EP) sales, and preliminarily found that Unicatch absorbed antidumping duties for its constructed export price (CEP) sales during the instant POR.[5] For these final results, no party filed comments on this issue and, therefore, we have made no changes to our *Preliminary Results* with respect to duty absorption.[6]

Final Results of Review

As a result of this review, Commerce determines that the following margins exist for the period of review (POR) of July 1, 2016 through June 30, 2017:

Producer/exporter	Margin (percent)
Bonuts Hardware Logistic Co., Ltd	78.13
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	0.00
Unicatch Industrial Co. Ltd	6.16

[5] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 5–7.

[6] *Id.*

Disclosure

We intend to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**. We will instruct CBP to apply an *ad valorem* assessment rate of 78.13 percent, 0.00 percent, and 6.16 percent, respectively, to all entries of subject merchandise during the POR which were produced and/or exported by the companies stated above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Bonuts, PT/Pro-Team, or Unicatch, for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the rates established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 2.16 percent,[8] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 18, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Scope of the Order
V. Duty Absorption
VI. Discussion of the Issues
A. General Issues

[8] *See Certain Steel Nails from Taiwan: Notice of Court Decision Not in Harmony with Final Determination in Less Than Fair Value Investigation and Notice of Amended Final Determination,* 82 FR 55090, 55091 (November 20, 2017).

Comment 1: Constructed Value (CV) Profit—Financial Statements
Comment 2: CV Profit—Calculation Adjustments
B. PT/Pro-Team Issues
Comment 3: Transactions Disregarded Adjustment for Pro-Team's Factory Overhead
Comment 4: Tollers
B. Unicatch Issues
Comment 5: Inclusion of Verification Corrections
Comment 6: Scrap Offset
Comment 7: Cost of Production
Comment 8: Imputed Interest
Comment 9: Freight Revenue
Comment 10: Commissions
Comment 11: TC's U.S. Commissions
Comment 12: U.S. Warehousing Expenses
Comment 13: Programming Errors
VII. Recommendation

[FR Doc. 2019–05427 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG737

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Confined Rock Blasting Near Ketchikan, Alaska

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

ACTION: Notice; request for comments.

SUMMARY: NMFS has received a request from City of Ketchikan for authorization to take marine mammals incidental to underwater confined rock blasting in Ketchikan, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 26, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.redding@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Gray Redding, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable [adverse] impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 10, 2018, NMFS received a request from the City of Ketchikan for an IHA to take marine mammals incidental to underwater confined blasting and excavation in southeastern Alaska. The application was deemed adequate and complete on February 7, 2019. City of Ketchikan's request is for take of a small number of nine marine mammal species by Level B harassment and three marine mammal species by Level A harassment. Neither the City of Ketchikan nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The City of Ketchikan proposes to conduct underwater confined blasting of a rock pinnacle in the Tongass Narrows, southeastern Alaska. Removal of the underwater pinnacle will expand the area of safe navigation depths for cruise ships that presently visit Berths I and II. Removing the pinnacle will provide a more reliable ingress and egress for ships over a much wider range of wind and water level conditions. The project is planned to occur from September 2019 through April 2020, and the action has the potential to affect waters in the Tongass Narrows and nearby Revillagigedo Channel, approximately 3 miles to the south.

Dates and Duration

The project is scheduled to occur from September 16, 2019 through April 30, 2020, but the blasting portion of the activities is expected to occur between November 15, 2019 and March 15, 2020. This work window will avoid periods of known salmon and eulachon spawning, minimizing impact on these species and on marine mammals who may be attracted to these prey sources. Blasting is only planned for 50 days, so it will not occur each day during that period. Blasting will occur once per day, with the blast lasting approximately one second a day, and only during daylight hours.

Specific Geographic Region

The City of Ketchikan is located in Southeast Alaska. The proposed activities will take place offshore from cruise ship Berth II in Ketchikan, Alaska, on the Tongass Narrows water-body (see Figure 1 of IHA application). Berth II is located in the southeastern portion of Ketchikan, opposite Pennock Island and near the mouth of Ketchikan Creek. The rock pinnacle to be removed sits in the channel between Pennock Island and the City of Ketchikan on Revillagigedo Island approximately 1,000 feet (ft) (305 meters (m)) west of Berth II. The immediate area is part of the Port of Ketchikan, an active marine commercial and industrial area.

The region of activity originates in the Tongass Narrows and extends southeast into the Revillagigedo Channel (approximately 3.1 miles (5 km) from Ketchikan). Impacts from all project activities are not expected to extend further than about three miles northeast of the City, where underwater noise would be impeded by landmasses.

Detailed Description of Specific Activity

Blasting

A submerged rock pinnacle sits in the channel off of Berth II, limiting vessel navigation during low tide and high wind conditions. An underwater rock pinnacle near the cruise ship docks must be removed to allow ship traffic proper access in and out of the berths. This pinnacle, roughly 320 ft (97.5 m) by 150 ft (45.7 m), requires blasting for removal to a depth of approximately 42 ft (12.8 m) mean lower low water (MLLW).

Work includes equipment mobilization, drilling of small boreholes (less than 8 inches), rock pinnacle removal through blasting, dredging of blasted material and transport of the material to an appropriate upland stockpile or placement site, and equipment demobilization. Boreholes will be drilled through casings and from stationary barges, held on site by spuds and/or anchors. NMFS has authorized take in association with certain types of drilling in other projects, (83 FR 53217, October, 22, 2018), but those typically have much larger holes being drilled and/or other circumstances leading to an expectation of louder sound levels than are expected here. Because of the small borehole size, acoustic impacts from drilling are not expected to rise to the level of a take, and take is not proposed to be authorized for drilling activities, so its impacts are discussed minimally in this document.

There will be up to 50 days of blasting (currently anticipating between 25 and 50 total blasts) limited to at most, one blast per day. A blast consists of a detonation of a series of sequential charges, delayed from one another at an interval of 8 milliseconds (ms), with the total blast typically lasting less than 1 second (one second = 1000 milliseconds). Each delayed charge in the blast will contain a maximum of 75 total lbs (34 kg) of explosive. The timing of the blast must assure that the maximum pounds per delay does not exceed 75 lbs. The proposed daily blast will consist of a grid of boreholes, each containing a delayed charge (total number may vary but typically it ranges between 30 to 60 holes), with the top section of the hole then filled in with stone (this process is referred to as ''rock stemming''). This borehole grid pattern would have a minimal spacing of four ft between each charge, but this spacing could increase to six or more feet based on observations of how the rock is responding to blasting. For the purposes of impact modeling, four foot spacing was assumed as this minimal distance results in the most conservative impact zone estimates. Rock stemming locks the explosive material into the borehole to assure that most of the resulting energy enters the surrounding rock rather than the water column. This mitigates, or reduces, the blast energy released into the water. When the blast is detonated, each small borehole is triggered in a sequential manner to optimize rock fragmentation while minimizing underwater overpressure. This sequence is also important in reducing the amount of energy required to fracture the rock.

The use of multiple boreholes, confinement of the blast (rock stemming), and use of planned sequential delays, all help to direct the blast energy into the rock rather than the water column. Other best management practices (BMPs) include adherence to a winter in-water work window to avoid fish spawning periods (September 16, 2019 through April 30, 2020), accurate drilling, minimal blast duration, and limiting the blasts to a maximum of one per day. The project will adhere to all federal and state blasting regulations, which includes the development and adherence to blasting plans, monitoring, and reporting. All of the proposed BMPs support the reduction of potential adverse impacts on protected species from in-water noise and overpressure.

Dredging

Dredging of the approximately 7,500 cubic yards (approximately 5734 m^3) of material freed by blasting will occur to bring the area to approximately -42 ft MLLW. Material will be removed and placed at the placement site using either a mechanical dredge or excavator deployed on a stationary barge. Material will be transported to an appropriate upland stock pile or placement site. While dredge material is removed and placed, barges will be held stationary by spuds and/or anchors.

Dredging is considered to be a low-impact activity for marine mammals, producing non-pulsed sound and being substantially quieter in terms of acoustic energy output than sources such as seismic airguns and impact pile driving. Noise produced by dredging operations has been compared to that produced by a commercial vessel travelling at modest speed (Robinson *et al.,* 2011). Further discussion of dredging sound production may be found in the literature (*e.g.,* Richardson *et al.,* 1995, Nedwell *et al.,* 2008, Parvin *et al.,* 2008, Ainslie *et al.,* 2009). Because dredging is expected to produce sounds similar to daily port activities, a marine mammal would not be expected to react to the sound nor subsequently be harassed. Therefore, the effects of dredging on

marine mammals are not expected to rise to the level of a take. As stated, take is highly unlikely and is not proposed to be authorized for dredging activities, so its impacts are discussed minimally in this document.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

Table 1 lists all species with expected potential for occurrence in waters near Ketchikan, Alaska and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (*e.g.,* Muto *et al.,* 2018). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.,* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED SURVEY AREAS

Common name	Scientific name	MMPA stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	138
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	E, D,Y	10,103 (0.3; 7,890; 2006).	83	25
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, N	N.A	N.A.	N.A.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, N	2,347 (N.A.; 2,347; 2012).	24	1
		West Coast Transient	-, N	243 (N.A., 243, 2009)	2.4	0
		Northern Resident	-, N	261 (N.A; 261; 2011)	1.96	0
		Gulf of Alaska Transient	-, N	587 (N.A.; 587; 2012)	5.87	1
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-, -; N	26,880 (N.A.; N.A.; 1990).	N.A.	0
Family Phocoenidae:						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, Y	975 (0.10; 896; 2012)	8.95	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, N	83,400 (0.097, N.A., 1993).	N.A.	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	41,638 (N.A.; 41,638; 2015).	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Clarence Strait	-, N	31,634 (N.A.; 29,093; 2011).	1,222	41

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N.A.).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, all 9 species (with 12 managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. In addition, the northern sea otter (*Enhydra lutris*) may be found in waters near Ketchikan, Alaska. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Harbor Seals

The Clarence Strait stock of harbor seals is not classified as a strategic stock (Muto *et al.,* 2017). Harbor seals occurring near Ketchikan belong to the Clarence Strait harbor seal stock. Harbor seals belonging to the Clarence Strait stock have maintained an increasing population over the past 5 years. The latest stock assessment analysis indicates that the Clarence Strait population trend is an increase of 921 seals per year, with a low probability (21 percent) that the stock is decreasing based on 5-year trend analysis (Muto *et al.,* 2018).

Harbor seals inhabit coastal and estuarine waters off Baja California; north along the western coasts of the United States, British Columbia, and Southeast Alaska; west through the Gulf of Alaska and Aleutian Islands; and in the Bering Sea north to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters (Muto *et al.,* 2017).

Harbor seals are common in the inside waters of southeastern Alaska. There are no documented long-term haulout sites for harbor seals in Tongass Narrows; seasonal foraging is known to occur at the mouth of Ketchikan Creek (See Figure 2 in IHA Application), typically during late summer/early fall pink salmon runs (See IHA Application). Harbor seals are known to occupy the Ketchikan harbor directly adjacent to the planned pinnacle removal. Daily sightings of low numbers of harbor seals in the immediate vicinity of the project are common.

Steller Sea Lion

The Steller sea lion is the largest of the eared seals, ranging along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Subsequently, NMFS published a final rule designating critical habitat for the species as a 20 nautical mile buffer around all major haulouts and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (58 FR 45269; August 27, 1993). In 1997, NMFS reclassified Steller sea lions as two distinct population segments (DPS) based on genetic studies and other information (62 FR 24345; May 5, 1997). Steller sea lion populations that primarily occur west of 144° W (Cape Suckling, Alaska) comprise the western DPS (wDPS), while all others comprise the eastern DPS (eDPS); however, there is regular movement of both DPSs across this boundary (Jemison *et al.,* 2013). Due to the distance from this DPS boundary, NMFS is only considering eastern DPS Steller sea lions as present in the action area. Therefore, animals potentially affected by the project are assumed to be part of the eastern stock and the western stock is not discussed here.

Steller sea lions range along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Large numbers of individuals disperse widely outside of the breeding season (late May to early July), thus potentially intermixing with animals from other areas, probably to access seasonally important prey resources (Muto *et al.,* 2017).

The current total population for the eastern stock is estimated at 71,562 (Johnson and Fritz 2014) with the U.S. portion of that stock totaling 41,638 and the southeast Alaska region supporting 28,594 eastern Steller sea lions (Muto *et al.,* 2018). Modeling reporting in the most recent stock assessment indicates population growth of 4.76 percent per year between 1989 and 2015.

There are several mapped and regularly monitored long-term Steller sea lion haulouts surrounding Ketchikan, such as Grindall island (approximately 20 miles from Ketchikan), West Rocks (36 miles), or Nose Point (37 miles), but none within Tongass Narrows (Fritz *et al.,* 2015). Sea lions are rarely observed in the Tongass narrows during the winter (See IHA Application). Fritz *et al.* (2015) reported adult counts at Grindall Island, located approximately 20 miles away from the project area, averaged about 190 between 2002 and 2015. No pups were recorded during this timeframe. West Rock averaged over 650 adults with 0 to 3 pups observed over the same timeframe. These long-term and seasonal haulouts are important habitat for Steller sea lions, but all are outside of the action area.

Grindall Island is approximately 20 miles outside of the portion of the action area where sound from the blasting is expected to rise to the level of take, north and west of the Tongass Narrows. Given that sea lion presence in Tongass Narrows mostly occurs during the Chinook run, outside of the in-water work window, and the nearest haulout site is outside of the action area, it is expected that Steller sea lion exposure to pinnacle blasting will be low. This has been confirmed by local observers, who have reported one to three sea lions in the Tongass Narrows near Ketchikan during the Chinook run, and otherwise rarely observed any.

In summary, Steller sea lions are common throughout the inside waters of southeast Alaska and reside in areas nearby Tongass Narrows, however are not commonly observed in Tongass Narrows outside of the Chinook run. However due to the proximity of the Grindall Island haulout and the possibility of Steller sea lion movement around this haulout, they are potentially present year-round within the action area.

Harbor Porpoise

Because the abundance estimates are 12 years old and the frequency of incidental mortality in commercial fisheries is not known, the Southeast Alaska stock of harbor porpoise is classified as a strategic stock (Muto *et al.,* 2017).

There are three harbor porpoise stocks in Alaska including the Southeast Alaska stock, Gulf of Alaska stock, and the Bering Sea stock. Only the Southeast Alaska stock occurs in the project vicinity. A review of survey data collected from 2010 through 2012 calculated an abundance estimate of 975 harbor porpoises (Dahlheim *et al.,* 2015). This estimate was split into the northern and southern portion of the unit and only included inside waters of southeast Alaska. Harbor porpoise abundance in the southern portion, including Ketchikan, is estimated to be 577. However, this number is likely biased low due to survey methodology (Muto *et al.,* 2017).

Older abundance surveys which included both coastal and inside waters of southeast Alaska resulted in an observed abundance estimate of 3,766 porpoise (Hobbs and Waite 2010). Correction factors for observer perception bias and porpoise availability at the surface were used to develop an estimated corrected abundance of 11,146 harbor porpoise in both the coastal and inside waters of Southeast Alaska.

Harbor porpoise primarily frequent coastal waters, and in the Gulf of Alaska and Southeast Alaska, they occur most frequently in waters less than 100 meters (Dahlheim *et al.,* 2009). Within the inland waters of Southeast Alaska, the harbor porpoise distribution is clumped, with greatest densities observed in the Glacier Bay/Icy Strait region, and near Zarembo and Wrangell Islands and the adjacent waters of Sumner Strait (Muto *et al.,* 2017).

Harbor porpoise are spotted sporadically from marine tour ships around Ketchikan (See IHA Application). One sighting every three weeks was reported, typically north of the Tongass Narrows in Behm Canal. The duration of these animals remaining in the area is unknown. The mean group size of harbor porpoise in Southeast Alaska is estimated at two individuals (Dahlheim *et al.,* 2009). Therefore, while less common within the Tongass Narrows than nearby areas, harbor porpoise could potentially pass through the area and/or occupy the Revillagigedo Channel year-round.

Humpback Whales

The humpback whale is distributed worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres, and migrate to high latitudes in the summer to feed (Johnson and Wolman 1984).

Under the MMPA, there are three stocks of humpback whales in the North Pacific: (1) The California/Oregon/Washington and Mexico stock, consisting of winter/spring populations in coastal Central America and coastal Mexico which migrate to the coast of California to southern British Columbia in summer/fall; (2) the central North Pacific stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands; and (3) the western North Pacific stock, consisting of winter/spring populations off Asia which migrate primarily to Russia and the Bering Sea/Aleutian Islands. The central north Pacific stock is the only stock that is found near the project activities.

On September 8, 2016, NMFS published a final rule dividing the globally listed endangered species into 14 DPSs under the ESA, removing the worldwide species-level listing, and in its place listing four DPSs as endangered and one DPS as threatened (81 FR 62259; effective October 11, 2016). Two DPSs (Hawaii and Mexico) are potentially present within the action area (Wade *et al.,* 2016). This study found a strong majority of whales present in the area belong to the delisted Hawaii DPS, while less than 10 percent of the whales expected within Southeast Alaska belong to the threatened Mexico DPS. Wade *et al.* (2016) calculated stock estimates for the newly recognized DPS's: 11,398 for Hawaii and 3,264 for Mexico. Wade *et al.* (2016) reports a distribution of 93.9 percent Hawaii DPS vs 6.1 percent Mexico DPS humpback whale observation percentage in Southeast Alaska and these relative abundance percentages are used in the analysis contained within this document.

Humpback whales are the most commonly observed baleen whale in the area and surrounding Southeast Alaska, particularly during spring and summer months. Humpback whales in Alaska, although not limited to these areas, return to specific feeding locations such as Frederick Sound, Sitka Sound, Glacier Bay, Icy Straight, Lynn Canal, and Prince William Sound, as well as other similar coastal areas (Hendrix *et al.,* 2011).

Summertime observations show humpback whales commonly transit the Tongass Narrows, particularly in late May into June (See IHA Application). Wintertime observations are reported occasionally, though not annually. Humpback whales are most likely to occur in the action area during periods of seasonal prey aggregations which typically occur in spring and can occur in summer and fall (Freitag 2017, as cited in 83 FR 22009, May 11, 2018). Herring salmon, eulachon, and euphausiids (krill) are among the species that congregate ephemerally (HDR 2003). When humpback whales come into the Narrows to feed, they often stay in the channel for a few days at a time (Freitag 2017).

In conclusion, humpback whales could be present within the action area at any point during the year. They are most likely to occur seasonally during periods of prey aggregation, typically during the late spring and summer months.

Killer Whale

Killer whales are found throughout the North Pacific. On the west coast of North America killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (Muto *et al.,* 2017). Seasonal and year-round occurrence has been noted for killer whales throughout Alaska and in the intracoastal waterways of British Columbia and Washington State, where whales have been labeled as ''resident,'' ''transient,'' and ''offshore'' type killer whales based on aspects of morphology, ecology, genetics and behavior.

Killer whales occurring near Ketchikan could belong to one of four different stocks: Eastern North Pacific Alaska resident stock (Alaska residents); Eastern North Pacific Northern resident stock (Northern residents); Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock (Gulf of Alaska transients); or West Coast transient stock (Muto *et al.,* 2017). The Northern resident stock is a transboundary stock, and includes killer whales that frequent British Columbia, Canada, and southeastern Alaska (Muto *et al.,* 2018).

In recent years, a small number of the Gulf of Alaska transients (identified by genetics and association) have been seen in southeastern Alaska; previously only West Coast transients had been seen in southeastern Alaska (Muto *et al.,* 2017). Therefore, the Gulf of Alaska transient stock occupies a range that includes southeastern Alaska. Photo-identification studies have identified 587 individual whales in this stock.

The West Coast transient stock includes animals that occur in California, Oregon, Washington, British Columbia and southeastern Alaska. Analysis of photographic data identifies 243 individual transient killer whales, however this minimum population size estimate does not include whales that belong to this stock but occur in California or the ''outer coast'' portion of the stock (Muto *et al.,* 2017).

Local citizens (See IHA Application) report that killer whale pods frequent the Tongass Narrows area, with a peak abundance of 20 to 30 during the Chinook salmon run, however the work window is not expected to align with major times of fish spawning. Transient killer whales are known to prey on marine mammals (Muto *et al.,* 2018), so their presence may be less dependent on fish spawning runs. Still, wintertime observations are less common, with a group of five whales reported transiting the narrows in winter 2016/2017, but none the following winter as of January 2018. Despite being rare in occurrence during the proposed time of construction (pods expected to absent more often than present), it must be acknowledged that killer whales often travel in pods and would occur as such if they were to occur at all in the project area. Typical pod sizes observed within the Tongass Narrows area range from 1 to 10 animals and the frequency of killer whales passing through the action area is estimated to be once per month (Solstice 2018, as cited in 83 FR 37473,

August 1, 2018). For the purposes of this request we estimate that a group of five whales (pod) may occur near the action area occasionally. While we are assuming a group size in the middle of the expected range, we are assuming a higher frequency of group occurrence (See ''Estimated Take'' section below). Due to the wide variety of life history strategies of the different killer whale populations, they could be present within the action area at any time throughout the year.

Dall's Porpoise

Dall's porpoise are widely distributed across the entire North Pacific Ocean. Throughout most of the eastern North Pacific they are present during all months of the year, although there may be seasonal onshore-offshore movements along the west coast of the continental United States and winter movements of populations out of Prince William Sound and areas in the Gulf of Alaska and Bering Sea (Muto *et al.,* 2017).

Dahlheim *et al.* (2009) found Dall's porpoise throughout Southeast Alaska, with concentrations of animals consistently found in Lynn Canal, Stephens Passage, Icy Strait, upper Chatham Strait, Frederick Sound, and Clarence Strait. Local observers do not report specific sightings of Dall's porpoise, which typically show a strong vessel attraction (Muto *et al.,* 2017) making observations easy for a keen eye. The mean group size of Dall's porpoise in Southeast Alaska is estimated at approximately three individuals (Dahlheim *et al.,* 2009; Jefferson *et al.,* 2019), however, in the Ketchikan vicinity, Dall's porpoises are reported to typically occur in groups of 10–15 animals, with an estimated maximum group size of 20 animals (Freitag 2017, as cited in 83 FR 22009, May 11, 2018). Jefferson *et al.* (2019) presents historical survey data showing few sightings in the Ketchikan area, and based on these occurrence patterns, concludes that Dall's porpoise rarely come into narrow waterways, like Tongass Narrows. Overall, sightings of Dall's porpoise are infrequent near Ketchikan, but they could be present on any given day during the construction period.

Minke Whale

In the North Pacific minke whales occur from the Bering and Chukchi Seas south to near the Equator (Muto *et al.,* 2017). Dahlheim *et al.* (2009) observed minke whales during the spring and summer, with multiple sightings near the north end of Clarence Strait and one observation near the Dixon entrance. Observations were concentrated near the entrance to Glacier Bay, far north of the work area. Local observers do not report observations of minke whales, and that they are considered rare in waters around Ketchikan. The Alaska stock of minke whales occurs in Southeast Alaska. At this time, it is not possible to produce a reliable estimate of minimum abundance for this wide-ranging stock. No estimates have been made for the number of minke whales in the entire North Pacific. Surveys in 2001–2003 of an area ranging from Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands estimate 1,233 animals (Zerbini *et al.,* 2006). 2010 surveys on the eastern Bering Sea shelf included 1,638 kilometer of effort and provide a provisional estimate of 2,020 whales (Friday *et al.,* 2013). Neither of these estimates corrected for animals missed on the trackline and only surveyed a portion of the stock's range. Due to lacking abundance estimates the current minimum population number is considered unknown. While considered rare within the vicinity, minke whales could enter the action area at any time throughout the year.

Gray Whale

The Eastern North Pacific (ENP) stock of gray whale was delisted from the ESA in 1994 (NMFS 1994). It is not listed as ''depleted'' under the MMPA. Crossover in range between the ESA-endangered Western North Pacific (WNP) stock is considered rare, though not unheard of. Various tagging, photo-identification, and genetic studies showed 27 to 30 whales identified in the WNP off Russia have been observed in the ENP, including the coastal waters of Canada, the United States, and Mexico (Carretta *et al.,* 2017, Caretta *et al.,* 2019 DRAFT). These WNP gray whales are not expected to be present during the proposed activity, because the project occurs primarily during late fall to early spring. At this time, gray whales are generally in their wintering grounds, with the WNP primarily overwintering in the Western Pacific (Carretta *et al.,* 2017).

The ENP stock of gray whale primarily spends summer and autumn in Chukchi, Beaufort and northwestern Bering Seas, but some members of the group can occupy the waters between Kodiak Island down to Northern California during this time (Carretta *et al.,* 2017). Winter migration brings these animals to Baja California, Mexico. Population size is calculated based on migrating whales counted as they pass the central California coast; the most recent estimate of ENP abundance is 20,990 (Durban *et al.,* 2013). A photographic mark-recapture study (Calambokidis *et al.,* 2014) calculated an abundance estimate for the PCFG of 209 whales. The population size has been stable or increasing over the last several decades (Muto *et al.,* 2017).

A study of gray whale abundance from Northern California to British Columbia (Calambokidis *et al.,* 2014) analyzed seasonal timing and abundance of ENP gray whales over 13 years (1998 through 2010). Whales were sighted every day, however very few during December through February when most whales are in or migrating to Mexico. During this study period, 25 whales were reported in the entire Southeast Alaska region, five of which occurred in November, within the proposed construction window (November to March).

Gray whales are not generally reported by Ketchikan residents. A gray whale entering the Tongass Narrows appears highly unlikely, however a gray whale could migrate through or near the Dixon Entrance during November, and possibly travel up the Nichols Channel into the action area as it extends into the Revillagigedo Channel.

A gray whale sighting within the action area would be considered extremely rare, however they could travel up the Revillagigedo Channel during the work period.

Pacific White-Sided Dolphin

Pacific white-sided dolphin are not designated as ''depleted'' under the MMPA nor listed as ''threatened'' or ''endangered'' under the ESA. Because Pacific white-sided dolphin are considered common in the waters of Alaska and because the number of human-related removals is currently thought to be minimal, this stock is not a strategic stock (Muto *et al.,* 2017).

Pacific white-sided dophins (North Pacific Stock) have an estimated population size of 26,880 in the most recent stock assessments (2018). Surveys for the Alaska stock of Pacific white-sided dolphin were conducted in the late 1980s and early 1990s (Buckland *et al.,* 1993) and more recently in 2005, 2006, 2014 and 2016. The abundance estimate is based on recently published report by NMFS (James *et al.,* 2018).

Dalheim *et al.* (2009) frequently encountered Pacific white-sided dolphin in Clarence Strait with significant differences in mean group size and rare enough encounters to limit the seasonality investigation to a qualitative note that spring featured the highest number of animals observed. These observations were noted most typically in open strait environments, near the open ocean. Mean group size

was over 20, with no recorded winter observations nor observations made in the Nichols Passage or Behm Canal, located on either side of the Tongass Narrows.

Though generally preferring more pelagic, open-water environments, Pacific white-sided dolphin could be present within the action area during the construction period.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 (decibels) dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Nine marine mammal species (seven cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to SPLs (sound pressure level [the sound force per unit area]), sound is referenced in the context of underwater sound pressure to one microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels

(Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,*1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Description of Sound Sources

In-water construction activities associated with the project would include dredging, borehole drilling, and blasting. Sound sources can be divided into broad categories based on various criteria or for various purposes. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.,* intermittent). Continuous sounds are simply those whose sound pressure level remains above ambient sound during the observation period (ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Sound sources may also be categorized by spectral property. The sounds produced by the City of Ketchikan's activities fall into one of two general sound types: Impulsive and non-impulsive (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are by definition intermittent, and produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI 1995; NIOSH 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of impulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Explosives used for blasting emit an impulsive sound, which is characterized by a short duration, abrupt onset, and rapid decay. Exposure to high intensity sound may result in behavioral reactions and auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005).

The proposed project also includes the use of various low-level non-impulsive acoustic sources, including dredging and small diameter, borehole drilling, that would consistently emit noise for an extended period of time and increase vessel traffic in the Tongass Narrows. The source levels as well as impacts from dredging and fill placement activities are sources with generally lower source levels than many other sources we consider and are not thought to be dissimilar to other

common industrial noise sources at a working port, such as Tongass Narrows. Because dredging is expected to produce sounds similar to daily port activities, a marine mammal would not be expected to react to the sound nor subsequently be harassed. Based on this, NMFS does not generally authorize take for dredging activities, including this project, where dredging will occur in a busy port. Additionally, while take has been authorized associated with drilling activities in other IHAs (83 FR 53217, October 22, 2018), these have been for larger diameter drilling associated with piles. The borehole drilling associated with blasting is small diameter, and as such, are not thought to be dissimilar to other common industrial noise sources at a working port, such as Tongass Narrows. Because borehole drilling is expected to produce sounds similar to daily port activities, a marine mammal would not be expected to react to the sound and therefore would not experience harassment. Based on this, NMFS feels it is not necessary to authorize take for these drilling activities.

Acoustic Impacts

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from acoustic sources can potentially result in one or more of the following; temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the City of Ketchikan's blasting activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that the City of Ketchikan's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above that which induces mild TTS: A 40-dB threshold shift approximates PTS onset; (*e.g.,* Kryter *et al.,* 1966; Miller, 1974), whereas a 6-dB threshold shift approximates TTS onset (*e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as bombs) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level (SEL) thresholds are 15 to 20 dB higher than TTS cumulative SEL thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et*

al., 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. We note Reichmuth *et al.* (2016) attempted to induce TTS in an additional two species of pinnipeds (ringed seal and spotted seal); however, they were unsuccessful. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Finneran (2015).

Physiological Effects

In addition to PTS and TTS, there is a potential for non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound. These impacts can include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack 2007). The City of Ketchikan's activities involve the use of devices such as explosives, which has been associated with these types of effects. The underwater explosion will send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface (though this energy is reduced by as much as 60–90 percent by confining the blast as the City of Ketchikan plans to do). The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN 2001). Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg 2000). Gas-containing organs, particularly the lungs and gastrointestinal (GI) tract, are especially susceptible (Goertner 1982; Hill 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe GI tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten 1995).

The above discussion concerning underwater explosions only pertains to open water detonations in a free field. Therefore, given the low weight of the charges, confined nature of the blasts, and small size of the detonation relative to large open water detonations in conjunction with monitoring and mitigation measures discussed below, the City of Ketchikan's 25 to 50 blasting events are not likely to have severe injury or mortality effects on marine mammals in the project vicinity. Instead, NMFS considers that the City of Ketchikan's blasts are most likely to cause TTS (Level B harassment) in a few individual marine mammals, but there could be limited non-lethal injury and PTS (Level A harassment) in three species, as discussed below.

Behavioral Effects

Based on the near instantaneous nature of blasting, if only single blast is being conducted each day, NMFS does not expect behavioral disturbance to occur. The City of Ketchikan's proposed blasting is a single blast, composed of charges separated by microdelays (approximately 8 ms), and therefore behavioral disturbance is not expected to occur. As a result, because single detonation blasting is the only proposed activity for which take is expected to occur, behavioral disturbance is only discussed briefly below.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies

involving marine mammal behavioral responses to sound.

Stress Response

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Acoustic and Pressure Effects, Underwater

The effects of sounds and blasting pressure waves from the City of Ketchikan's proposed activities might include one or more of the following: Temporary or permanent hearing impairment and non-auditory physical or physiological effects, however the near instantaneous nature of blasting activity and planned single blast per day means behavioral disturbance is not likely to occur (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of underwater detonations on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the sound; the depth of the water column; the substrate of the habitat; the standoff distance between activities and the animal; and the sound propagation properties of the environment. Thus, we expect impacts to marine mammals from the confined blasting activities to result primarily from acoustic pathways.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.,* 2008). Potential effects from impulsive sound sources like blasting can range in severity from effects such as behavioral disturbance to temporary or permanent hearing impairment (Yelverton *et al.,* 1973). Due to the nature of the sounds involved in the project and because only one blast will occur each day, behavioral disturbance is not expected to occur and TTS is the most likely effect from the proposed activity. This short duration of elevated noise is not expected to result in meaningful behavioral disturbance that constitutes take. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). Due to the use of mitigation measures discussed in detail in the Proposed Mitigation section, it is unlikely but possible that PTS could occur from blasting. Marine mammals would need to be within a relatively small radius (size dependent on hearing group) of the blast to experience PTS.

Anticipated Effects on Marine Mammal Habitat and Prey

Blasting will permanently impact habitat directly offshore from the Ketchikan waterfront. The rock pinnacle area to be removed is roughly 320 ft by 150 ft square with an average of 4 ft in height. Appendix B of the IHA application details the configuration of this feature. Vertical benthic structure provides habitat for a variety of fish and prey species and would be removed during this portion of the project. However, the surrounding area is heavily trafficked by large and small ships and is not a significant foraging ground for marine mammals. Removal of this submerged pinnacle would not impact growth and/or survival of marine mammal populations.

Construction activities will have temporary impacts on marine mammal habitat through increases in in-water and in-air sound from underwater blasting. Construction activities that increase in-water noise, have the potential to adversely affect forage fish and juvenile salmonids in the project area. Forage fish species are part of the prey base for marine mammals. Adult salmon are a part of the prey base for Steller sea lions, harbor seals, and killer whales. Forage fish and salmonids may alter their normal behavior during pinnacle blasting and associated activities. In-water construction timing, between September 16, 2019 and April 30, 2020, has been planned to avoid major spawning and migration times. After pinnacle blasting and associated activities are completed habitat use and function is expected to return to pre-construction levels.

The City of Ketchikan's blasting activities would produce pulsed (blasting) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Avoidance by potential prey (*i.e.,* fish, certain marine mammals) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after construction activity stops is unknown, but a rapid return to

normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave sufficiently large areas of fish and marine mammal foraging habitat in waters southeast and northeast of Tongass Narrows.

Additional studies have documented effects of impulsive sounds such as pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

While impacts from blasting to fish have the potential to be severe, including barotrauma and mortality, the blasts will last approximately one second on 25 to 50 days, making the duration of activity that could cause this impact short term. In general, impacts to marine mammal prey species are expected to be minor and the window for them to occur is temporary due to the short timeframe for the project.

Additionally, the presence of transient killer whales means some marine mammal species are also possible prey (harbor seals, harbor porpoises). The City of Ketchikan's blasting activities are expected to result in limited instances of TTS and minor PTS on these smaller marine mammals. That, as well as the fact that the City of Ketchikan is impacting a small portion of the total available marine mammal habitat means that there will be minimal impact on these marine mammals as prey.

For the most part, adverse effects on prey species during project construction will be short-term, based on the short duration of the project. Given the numbers of fish and other prey species in the vicinity, the short-term nature of effects on fish species and the mitigation measures to protect fish and marine mammals during construction, the proposed project is not expected to have measurable effects on the distribution or abundance of potential marine mammal prey species.

Other potential temporary impacts are on water quality (increases in turbidity levels) and on prey species distribution. BMPs and minimization practices used by the City of Ketchikan to minimize potential environmental effects from project activities are outlined in ''Proposed Mitigation.''

The most likely effects on marine mammal habitat from the proposed project will be a minor alteration of benthic habitat and temporary, short-duration noise, and water and sediment quality effects. The direct loss of habitat available to marine mammals during construction due to noise, water quality impacts, sediment quality impacts, and construction activity is expected to be minimal and return to pre-blasting conditions shortly after blasting is completed. After pinnacle blasting is completed habitat use and function in the general area are expected to return to pre-blasting levels, despite the removal of the underwater pinnacle feature. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment (via TTS), as use of the explosive source (*i.e.,* blasting) for a very short period each day has the potential to result in TTS for individual marine mammals. There is also some potential for auditory injury and slight tissue damage (Level A harassment) to result, primarily for mysticetes, porpoise, and phocids because predicted auditory injury zones are larger than for mid-frequency cetaceans and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. The primary relevant mitigation measure is avoiding blasting when any marine mammal is observed in the PTS zone. While this measure should avoid all take by Level A harassment, NMFS is authorizing takes by Level A harassment to account for the possibility that marine mammals escape observation in the PTS zone. Additionally, while the zones for slight lung injury are large enough that a marine mammal could occur within the zone (42 meters), the mitigation and monitoring measures, such as avoiding blasting when marine mammals are observed in PTS zone, are expected to minimize the potential for such taking to the extent practicable. Therefore the potential for non-auditory physical injury is considered discountable, and all takes by Level A harassment are expected to occur due to PTS.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will incur some degree of hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to incur TTS (equated to Level B harassment) or PTS (equated to Level A harassment) of some degree. Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage from exposure to pressure waves from explosive detonation. TTS is possible and Table 3 lists TTS onset thresholds.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City of Ketchikan's proposed activity includes the use of an impulsive source, blasting.

These thresholds are provided in Table 3 below. Table 3 also provides

threshold for tissue damage and mortality. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—EXPLOSIVE ACOUSTIC AND PRESSURE THRESHOLDS FOR MARINE MAMMALS

Group	Level B harassment		Level A harassment	Serious injury		Mortality
	Behavioral (multiple detonations)	TTS	PTS	Gastro-intestinal tract	Lung	
Low-freq cetacean	163 dB SEL	168 dB SEL or 213 dB SPL_{pk}.	183 dB SEL or 219 dB SPL_{pk}.	237 dB SPL	$39.1M^{1/3}$ $(1+[D/10.081])^{1/2}$ Pa-sec. where: M = mass of the animals in kg D = depth of animal in m	$91.4M^{1/3}$ $(1+[D/10.081])^{1/2}$ Pa-sec where: M = mass of the animals in kg D = depth of animal in m.
Mid-freq cetacean	165 dB SEL	170 dB SEL of 224 dB SPL_{pk}.	185 dB SEL or 230 dB SPL_{pk}.			
High-freq cetacean	135 dB SEL	140 dB SEL or 196 dB SPL_{pk}.	155 dB SEL or 202 dB SPL_{pk}.			
Phocidae	165 dB SEL	170 dB SEL or 212 dB SPL_{pk}.	185 dB SEL or 218 dB SPL_{pk}.			
Otariidae	183 dB SEL	188 dB SEL or 226 dB_{pk}.	203 dB SEL or 232 dB SPL_{pk}.			

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Blasting—While the NMFS Technical Guidance (2016) and associated User Spreadsheet include tools for predicting threshold shift isopleths for multiple detonations, the Marine Mammal Commission noted in response to a previous proposed IHA (83 FR 52394, October 17, 2018) that the User Spreadsheet contained some errors in methodology for single detonations. Following a method generated through consultation with the Marine Mammal Commission, NMFS computed cumulative sound exposure impact zones from the blasting information provided by the City of Ketchikan. Peak source levels of the confined blasts were calculated based on Hempet *et al.* (2007), using a distance of 4 feet and a weight of 75 pounds for a single charge. The total charge weight is defined as the product of the single charge weight and the number of charges. In this case, the maximum number of charges is 60. Explosive energy was then computed from peak pressure of the single maximum charge, using the pressure and time relationship of a shock wave (Urick 1983). Due to time and spatial separation of each single charge by a distance of four feet, the accumulation of acoustic energy is added sequentially, assuming the transmission loss follows cylindrical spreading within the matrix of charges. The SEL from each charge at its source can then be calculated, followed by the received SEL from each charge. Since the charges will be deployed in a grid with a least 4 ft by 4 ft spacing, the received SELs from different charges to a given point will vary depending on the distance of the charges from the receiver. As stated in the ''*Detailed Description of Specific Activity,*'' the actual spacing between charges will be determined based on how the rock responds to the blasting. Modeling was carried out using 4 ft spacing as this closest potential spacing results in the most conservative (highest) source values and largest resulting impact zones. Without specific information regarding the layout of the charges, the modeling assumes a grid of 7 by 8 charges with an additional four charges located in peripheral locations. Among the various total SELs calculated, the largest value, SELtotal(max) is selected to calculate the impact range. Using the pressure versus time relationship (Urick 1983), the frequency spectrum of the explosion can be computed by taking the Fourier transform of the pressure (Weston, 1960). Frequency specific transmission loss of acoustic energy due to absorption is computed using the absorption coefficient, α (dB/km), summarized by François and Garrison (1982a, b). Seawater properties for computing sound speed and absorption coefficient were based on Ketchikan ocean temperatures recorded from November through March (National Centers for Environmental Information, 2018) and salinity data presented in Vanderhoof and Carls (2012). Transmission loss was calculated using the sonar equation:

$$TL = SEL_{total(m)} - SEL_{threshold}$$

where $SEL_{threshold}$ is the Level A harassment and Level B harassment (TTS) threshold. The distances, R, where such transmission loss is achieved were computed numerically by combining both geometric transmission loss, and transmission loss due to frequency-specific absorption. A spreading coefficient of 20 is assumed. While this spreading coefficient would normally indicate an assumption of spherical spreading, in this instance, the higher coefficient is actually used to account for acoustic energy loss from the sediment into the water column. The outputs from this model are summarized in Table 4 below. For the dual criteria of SELcum and SPLpk shown in Table 4, distances in bold are the larger of the two isopleths, and were used in further analysis. Because the blast is composed of multiple charges arranged in a grid, these distances are measured from any individual charge, meaning that measurement begins at the outermost charges. For additional information on these calculations please refer to the ''Ketchikan Detonation Modeling Concept'' document which can be found at the following address: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

TABLE 4—MODEL RESULTS OF IMPACT ZONES FOR BLASTING IN METERS (m)

Marine Mammal Hearing Group	Mortality *	Slight lung injury *	GI Tract	PTS: SELcum	PTS: SPLpk	TTS: SELcum	TTS: SPLpk
Low frequency cetacean	6	12	24	**** 430**	188	**2,350**	375
Mid frequency cetacean	14	31	24	**90**	53	**430**	106
High frequency cetacean	18	42	24	**1420**	1328	**5,000**	2,650
Otariid	12	28	24	30	****42**	**150**	84
Phocid	16	37	24	210	**211**	**1,120**	420

* Estimates for Mortality and Slight lung injury are based on body size of each individual species, so multiple estimates exist for some marine mammal hearing groups. The value entered into the table is the most conservative (largest isopleth) calculated for that group.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Expected marine mammal presence is determined by past observations and general abundance near the Ketchikan waterfront during the construction window. The take requests for this IHA were estimated using local marine mammal data sets (*e.g.,* National Marine Mammal Laboratory databases; Dahlheim *et al.,* 2009) and observations from local Ketchikan charter operators and residents. A recent IHA and associated application for nearby construction (83 FR 37473, August 1, 2018) was also reviewed to identify marine mammal group size and potential frequency of occurrence within the project vicinity.

Harbor Seals

Low numbers of harbor seals are a common observation around the Ketchikan waterfront, and likely utilize other, less developed nearshore habitats within and adjacent to the Level B harassment zone. Harbor seals can occur in the project area year-round with an estimated maximum group size of three animals (83 FR 37473, August 1, 2018, Solstice 2018), and up to three groups of three animals occurring daily in the Level B harassment (TTS) zone (1,120 meters). Additionally, harbor seals could occasionally be found in the Level A harassment (PTS) zone.

Steller Sea Lions

Known Steller sea lion haulouts are well outside of the pinnacle blasting Level B harassment zone. However, Steller sea lions are residents of the wider vicinity and could be present within the Level B harassment zone on any given day of construction. Steller sea lion observations in the project area typically include groups composed of up to 10 animals (83 FR 37473, August 1, 2018, Solstice 2018), with one group potentially present each day.

Harbor Porpoise

Based on observations of local boat charter captains and watershed stewards, harbor porpoise are infrequently encountered in the Tongass Narrows, and more frequently in the nearby larger inlets and Clarence Strait. Therefore, they could potentially transit through both the Level B harassment zone and Level A harassment zone during a blasting event. They could occupy the Ketchikan waterfront and be exposed to the Level A harassment zone during transit between preferred habitats. Harbor porpoises observed in the project vicinity typically occur in groups of one to five animals with an estimated maximum group size of eight animals (83 FR 37473, August 1, 2018, Solstice 2018). For our impact analysis, we are considering a group to consist of five animals, a value on the high end of the typical group size. The frequency of harbor porpoise occurrence in the project vicinity is estimated to be one group passing through the area per month (83 FR 37473, August 1, 2018, Solstice 2018), but, for our analysis, we conservatively consider a group of five animals could be present every five days (approximately once per week).

Humpback Whales

Based on observations of local boat charter captains and watershed stewards, humpback whales regularly utilize the surrounding waters and are occasionally observed near Ketchikan, most often on a seasonal basis. Most observations occur during the summer with sporadic occurrences during other periods. The typical humpback whale group size in the project vicinity is between one and two animals observed at a frequency of up to three times per month (83 FR 37473, August 1, 2018, Solstice 2018), but conservatively, a group of two whales could be present every third day.

Killer Whales

Killer whales could occur within the action area year-round. Typical pod sizes observed within the project vicinity range from 1 to 10 animals and the frequency of killer whales passing through the action area is estimated to be once per month (83 FR 37473, August 1, 2018, Solstice 2018). In this project, NMFS assumes a group of five whales will be present every fifth day (approximately once per week). Note that groups could be larger, but we expect that the overall number of takes proposed for authorization is sufficient to account for this possibility given the conservative assumption that a pod would be present once per week.

Dall's Porpoise

Based on local observations and regional studies, Dall's porpoise are infrequently encountered in small numbers in the waters surrounding Ketchikan. This body of evidence is supported by Jefferson *et al.'*s (2019) presentation of historical survey data showing very few sightings in the Ketchikan area and conclusion that Dall's porpoise generally are rare in narrow waterways, like the Tongass Narrows. Tongass Narrows is not a preferred habitat, so if they are present, they would most likely be traveling between areas of preferred forage, which are not within the blasting work window. However, they could still potentially transit through the Level B or Level A harassment zone infrequently during blasting. Typical Dall's porpoise group sizes in the project vicinity range from 10 to 15 animals observed roughly once per month (83 FR 37473, August 1, 2018, Solstice 2018). In this project, NMFS assumes a group of 10 Dall's porpoises could be present every 10th day, or approximately every other week.

Minke Whale

Based on observations of local marine mammal specialists, the possibility of minke whales occurring in the Tongass Narrows is rare. Minke whales are generally observed individually or in groups of up to three animals. This, along with scientific survey data showing that this species has not been

documented within the vicinity, indicates that there is little risk of exposure to blasting. However, the accessible habitat in the Revillagigedo Channel leaves the potential that minke whale could enter the action area. NFMS assumes that a group of two whales may be present every tenth day, or approximately every other week.

Gray Whale

No gray whales were observed during surveys of the inland waters of southeast Alaska conducted between 1991 and 2007 (Dahlheim *et al.,* 2009). It is possible that a migrating whale may venture up Nichols Passage and enter the underwater Level B harassment zone. NMFS estimates that one whale may be present every tenth day, or approximately every two weeks.

Pacific White-Sided Dolphin

Dolphins are regularly seen within Clarence Strait but have been reported to prefer larger channel areas near open ocean. Their presence within the Tongass Narrows has not been reported. They are not expected to enter the Tongass Narrows toward their relatively small injury zone, so no take by Level A harassment is requested. Pacific white-sided dolphin group sizes generally range from between 20 and 164 animals. For the purposes of this assessment we assume one group of 20 dolphins may be present within the Level B harassment zone every tenth day, or about every other week.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Incidental take is estimated for each species by considering the likelihood of a marine mammal being present within the Level A or B harassment zone during a blasting event. Expected marine mammal presence is determined by past observations and general abundance near the Ketchikan waterfront during the construction window, as described above. The calculation for marine mammal exposures is estimated by the following two equations:

Level B harassment estimate = N (number of animals) × number of days animals are expected within Level B harassment zones for blasting

Level A harassment estimate = N (number of animals) × number of days animals are expected to occur within the Level A harassment zone without being observed by PSOs

For many species, the equation may also include a term to factor in the frequency a group is expected to be seen, which is explained within the paragraphs for that species.

Harbor Seals

We conservatively estimate that three groups of three harbor seals could be present within the Level B harassment zone on each day of construction and two additional harbor seals could be present within the Level A harassment zone on each day of construction. Because take estimates are based on anecdotal occurrences, including these additional individual harbor seals that could occur in the Level A harassment zone is another conservative assumption. Potential airborne disturbance would be accounted for by the Level B harassment zone, which covers a wider distance. Using these estimates the following number of harbor seals are estimated to be present through the construction period.

Level B harassment: Three groups of animals × three animals per group × 50 blasting days = 450

Level A harassment: Two animals × 50 days of blasting = 100

Steller Sea lions

We conservatively estimate that a group of 10 sea lions could be present within the Level B harassment zone on any given day of blasting. No exposure within the blasting Level A harassment zone is expected based on the small size of this zone and behavior of the species in context of the proposed mitigation. The Level A harassment zones can be effectively monitored during the marine mammal monitoring program and prevent take by Level A harassment. Using these estimates the following number of Steller sea lions are estimated to be present in the Level B harassment zone:

Level B harassment: 10 animals daily over 50 blasting days = 500

No take by Level A harassment was requested or is proposed to be authorized because the small Level A harassment zone can be effectively observed.

Harbor Porpoise

We conservatively estimate and assume that a group of five harbor porpoise could be sighted in the Level B harassment zone every 5th day, or approximately once per week. Additionally, while the City of Ketchikan does not anticipate take by Level A harassment to occur, the cryptic nature of harbor porpoises and large Level A harassment isopleth mean the species could be in the Level A harassment zone without prior observation. Therefore, one additional group of 5 animals could be present in the Level A harassment zone every second week or 10th day, a conservative assumption because this group is in addition to those anticipated in the Level B harassment zone.

Level B harassment: Five animals × 50 days of work divided by 5 (frequency of occurrence) = 50

Level A harassment: Five animals × 50 days of work divided by 10 (frequency of occurrence) = 25

Humpback Whale

Based on occurrence information in the area, we conservatively estimate that a group of two humpback whales will be sighted within the Level B harassment zone every third day. The City is requesting authorization for 33 takes by Level B harassment of humpback whales. Of this number, we estimate 31 humpback whales will belong to the unlisted Hawaii DPS while three will belong to the ESA listed Mexico DPS based on the estimated occurrence of these DPSs (Wade *et al.,* 2016). It should be noted that these estimates sum to 34, because take estimates were rounded up to avoid fractional takes of individuals in the DPSs.

Level B: Two animals × 50 days of work divided by 3 (frequency of occurrence) = 33.

No take by Level A harassment was requested or is proposed to be authorized because these large whales can be effectively monitored and work can be shutdown when they are present.

Killer Whale

Based on information presented above (*Marine Mammal Occurrence*) we conservatively estimate that a group of five whales may be sighted within the Level B harassment zone once every fifth day, or about once per week. Using this number, the following number of killer whales are estimated to be present within the Level B harassment zone:

Level B: Five animals × 50 days of work divided by 5 (frequency of occurrence) = 50

No take by Level A harassment was requested or is proposed to be authorized because the relatively small Level A harassment zone can be effectively monitored to prevent take by Level A harassment.

Dall's Porpoise

Based on information presented above (*Marine Mammal Occurrence*) we conservatively estimate and assume that a group of 10 Dall's porpoise could be sighted within the Level B harassment zone every tenth day, or about every

other week. Additionally, while the City of Ketchikan does not anticipate take by Level A harassment to occur, the large Level A isopleth mean the species could be in the Level A harassment zone without prior observation. Therefore, one additional group of 10 animals could be present in the Level A harassment zone every month, which is a conservative assumption because this group is in addition to those anticipated in the Level B harassment zone.

Using this assumption, the following number of Dall's porpoise are estimated to be present in the Level B harassment zone:

Level B harassment: 10 animals × 50 days of work divided by 10 (frequency of occurrence) = 50

Level A harassment: 10 animals × 50 days of work divided by 20 (frequency of occurrence) = 25; because this is a fraction of group, this number is rounded up to 30 to represent 3 full groups of Dall's porpoise

Minke Whale

Based on information presented above (*Marine Mammal Occurrence*) we conservatively estimate that two minke whales may be sighted within the Level B harassment zone every tenth day, or about once every two weeks.

Level B harassment: Two animals × 50 days work divided by 10 (frequency of occurrence) = 10

No take by Level A harassment was requested or is proposed to be authorized because the City of Ketchikan can effectively monitor for these whales and shutdown if are present in the Level A harassment zone.

Gray Whale

Based on information presented above (*Marine Mammal Occurrence*) we conservatively estimate that one whale may be sighted within the Level B harassment zone every tenth day, or about every 2 weeks.

Level B harassment: One animal × 50 days work divided by 10 (frequency of occurrence) = 5

No take by Level A harassment was requested or is proposed to be authorized because the City of Ketchikan can effectively monitor for these whales and shutdown if are present in the Level A harassment zone.

Pacific White-Sided Dolphin

Based on the assumption that Pacific white-sided dolphins are not expected to enter Tongass Narrows, despite their regular occurrence in the Clarence Strait, we estimate that one group of 20 dolphins may be sighted within the Level B harassment zone every tenth day, or about every other week.

Level B harassment: 20 animals × 50 days of work divided by 10 (frequency of occurrence) = 100

No take by Level A harassment was requested or is proposed to be authorized because the relatively small Level A harassment zone can be effectively monitored in order to avoid take by Level A harassment.

TABLE 5—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (NEST)	Level A	Level B	Percent of stock
Humpback Whale	Hawaii DPS (11,398) [a]	0	[a] 31	0.34
	Mexico DPS (3,264) [a]		3	
Minke Whale	Alaska (N/A)	0	10	N/A
Gray Whale	Eastern North Pacific (26,960)	0	5	0.02
Killer Whale	Alaska Resident (2,347)	0	50	2.13
	Northern Resident (261)			19.16
	West Coast Transient (243)			20.58
	Gulf of Alaska Transient (587)			[c] 8.52
Pacific White-Sided Dolphin	North Pacific (26,880)	0	100	0.37
Dall's Porpoise	Alaska (83,400)	30	50	0.10
Harbor Porpoise	Southeast Alaska (975) [b]	25	50	7.69
Harbor Seal	Clarence Strait (31,634)	100	450	1.74
Steller Sea Lion	Eastern U.S (41,638)	0	500	1.20

[a] Total estimated stock size for Central North Pacific humpback whales is 10,103. Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for DPSs listed under the ESA. Based on calculations in Wade *et al.* (2016), 93.9% of the humpback whales in Southeast Alaska are expected to be from the Hawaii DPS and 6.1% are expected to be from the Mexico DPS.

[b] In the SAR for harbor porpoise (NMFS 2017), NMFS identified population estimates and PBR for porpoises within inland Southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative).

[c] These percentages assume all 50 takes come from each individual stock, thus the percentage are likely inflated as multiple stocks are realistically impacted.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood

of effective implementation (probability implemented as planned) and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water heavy machinery work (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or equipment used to place or remove material), a minimum 10 meter shutdown zone shall be implemented. If a marine mammal comes within 10 meters of such operations, operations shall cease (safely) and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Movement of blasting barge; (2) drilling of boreholes; (3) dredging of rubble; and (4) transport of dredge material. An operation that requires completion due to safety reasons (*e.g.,* material actively being handled by excavator/clamshell), that singular operation will be allowed to be completed.

Additional Shutdown Zones and Monitoring Zones

For blasting, the Level B harassment zone will be monitored for a minimum of 30 minutes prior to the planned blast, and continue for 30 minutes after the blast. If a marine mammal with authorized take remaining is sighted within this monitoring zone, blasting can occur and take will be tallied against the authorized number of takes by Level B harassment. Data will be recorded on the location, behavior, and disposition of the mammal as long as the mammal is within this monitoring zone.

The City of Ketchikan will establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A harassment zone, as measured from any charge in the blasting grid. If any cetaceans or pinnipeds are observed within the shutdown zone, the blasting contractor would be notified and no blast would be allowed to occur until the animals are observed voluntarily leaving the shutdown zone or 15 minutes have passed without re-sighting the animal in the shutdown zone. When weather conditions prevent accurate sighting of marine mammals, blasting activities will not occur until conditions in the shutdown zone return to acceptable levels.

TABLE 6—BLASTING SHUTDOWN AND MONITORING ZONES

Marine mammal hearing group	Shutdown zone (m)	Monitoring zone (m)
Low frequency ceteacean	* 1,000	2,500
Mid frequency ceteacean	100	500
High frequency cetacean	1,500	5,000
Otariid	* 100	200
Phocid	250	1,500

Note: These distances are measured from the outermost points of the grid of charges that make up a blast.

* The City of Ketchikan expressed an opinion that the PTS distances for Otariids and LF cetaceans presented in Table 4 seemed uncharacteristically small when compared to the other thresholds resulting from the model. The PTS zones were therefore doubled to 84 m for Otariids and 860 m for LF cetaceans for purposes of mitigation and monitoring, resulting in the Shutdown Zones presented here.

If blasting is delayed due to marine mammal presence, PSO's will continue monitoring for marine mammals during the delay. If blasting is delayed for a reason other than marine mammal presence, and this delay will be greater than 30 minutes, marine mammal monitoring does not need to occur during the delay. However, if monitoring is halted, a new period of the 30 minute pre-blast monitoring must occur before the rescheduled blast.

Timing and Daylight Restrictions

In-water blasting work is expected to occur from November 15, 2019 to March 15, 2020, but will be limited to September 16, 2019 to April 30, 2020. Pinnacle blasting will be conducted during daylight hours (sunrise to sunset) to help ensure that marine mammal observers have acceptable conditions to survey the shutdown and monitoring zones. Non-blasting activities, including but not limited to dredging and borehole drilling can occur outside of daylight hours, but the 10-meter general shutdown zone must be maintained.

Non-Authorized Take Prohibited

If a marine mammal is observed within the monitoring zone and that species is either not authorized for take or its authorized takes are met, blasting must not occur. Blasting must be delayed until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed without seeing the marine mammal in the monitoring zone.

Blasting BMPs

The City of Ketchikan will use industry BMPs to reduce the potential adverse impacts on protected species from in-water noise and overpressure. These include the use of multiple small boreholes, confinement of the blast (rock stemming), use of planned sequential delays, and all measures designed to help direct blast energy into the rock rather than the water column. Additional BMPs to minimize impact on marine mammals and other species include adherence to a winter in-water work window, accurate drilling, shot duration, and limiting the blasts to a maximum of one per day. The project will adhere to all federal and state blasting regulations, which includes the development and adherence to blasting plans, monitoring, and reporting.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring

and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring by NMFS-approved protected species observers (PSOs) will begin 30 minutes prior to a planned blast and extend through 30 minutes after the blast. This will ensure that all marine mammals in the monitoring zone are documented and that no marine mammals are present within the shutdown zone. Hauled out marine mammals within the shutdown and monitoring zones will be tallied and monitored closely. PSOs will be stationed at the best vantage points possible for monitoring the monitoring zone (see Figure 3 and 4 of the IHA application); however, should the entire zone not be visible, take will be extrapolated daily, based on anticipated marine mammal occurrence and documented observations within the portion of the monitoring zone observed.

During blasting, there will be two land-based PSOs and one PSO on the barge used for blasting operations, with no duties other than monitoring. Establishing a monitoring station on the barge will provide the observer with an unobstructed view of the injury zones during blasting and direct communication with the operator.

Land based PSOs will be positioned at the best practical vantage points based on blasting activities and the locations of equipment. The land-based observers will be positioned with a clear view of the remaining of the injury zone and will monitor the shutdown zones and monitoring zones with binoculars and a spotting scope. The land-based observers will communicate via radio to the lead monitor positioned on the barge. Specific locations of the observers will be based on blasting activities and the locations of equipment. Shore-based observers will be stationed along the outer margins of the largest shutdown zone.

The monitoring position of the observers will be identified with the following characteristics:

1. Unobstructed view of blasting area;
2. Unobstructed view of all water within the shutdown zone;
3. Clear view of operator or construction foreman in the event of radio failure (lead biologist); and
4. Safe distance from activities in the construction area.

Monitoring of blasting activities must be conducted by qualified PSOs (see below), who must have no other assigned tasks during monitoring periods. The applicant must adhere to the following conditions when selecting observers:

- Independent PSOs must be used (*i.e.,* not construction personnel).
- At least one PSO must have prior experience working as a marine mammal observer during construction activities.
- Other PSOs may substitute education (degree in biological science or related field) or training for experience.
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction.
- The applicant must submit PSO curriculum vitae (CVs) for approval by NMFS.

The applicant must ensure that observers have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols.
- Experience or training in the field identification of marine mammals, including the identification of behaviors.
- Sufficient training, orientation, or experience with the blasting operation to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Test Blast Monitoring

While full hydroacoustic monitoring is not planned for this project, the City of Ketchikan will perform a minimum of one test blast to confirm underwater overpressure values. Overpressure will be measured during the test blast with hydrophones at pre-determined locations. This work will be performed by an experienced contractor with process documents, results, and the test blast report all being approved by a blasting consultant. For monitoring of this test blast, the City of Ketchikan will be required to record the following information:

- Hydrophone equipment and methods: recording device, sampling rate, distance of recording devices from the blast where recordings were made; depth of recording devices;
- Number of charges and the weight of each charge detonated during the blast; and
- Mean, median, and maximum sound levels (dB re: 1μPa) of SELcum and SPLpeak.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of blasting activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from construction activity;
- Distance from construction activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Additionally, the City of Ketchikan will submit the report and results of their test blast to NMFS prior to beginning production blasting. This report will include the information outlined in *Test Blast Monitoring.*

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as a serious injury or mortality, The City of Ketchikan would immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the City of Ketchikan to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of Ketchikan would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City of Ketchikan discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the City of Ketchikan would immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the City of Ketchikan to determine whether modifications in the activities are appropriate.

In the event that the City of Ketchikan discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of Ketchikan would report the incident to the Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. The City of Ketchikan would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Coordinator.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 5, given that NMFS expects the anticipated effects of the proposed blasting to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of the City of Ketchikan's proposed blasting. In the absence of proposed mitigation including shutdown zones, these impacts are possible, but at very short distances from the blasts (Table 4). NMFS feels that the mitigation measures stated in ''Proposed Mitigation,'' include adequate shutdown zones, marine mammal monitoring, and blasting BMPs sufficient to prevent serious injury or mortality. Thus, no serious injury or morality is proposed for authorization. As discussed in the *Potential Effects* section, non-auditory physical effects are not expected to occur.

The authorized number of takes by both Level A harassment and Level B harassment is given in Table 5. Take by Level A harassment is only proposed to be authorized for harbor seals, harbor porpoises, and Dall's porpoises. As stated in ''Proposed Mitigation'' the City of Ketchikan will establish shutdown zones, greater than Level A harassment zones for blasting, and a blanket 10 m shutdown zone will be implemented for all other in-water use of heavy machinery. The proposed authorization of take by Level A harassment is meant to account for the slight possibility that these species escape observation by the PSOs within the Level A harassment zone. Any take by Level A harassment is expected to arise from a small degree of PTS, because the isopleths related to PTS are consistently larger than those associated with slight lung and GI tract injury (Table 4).

Blasting is only proposed to occur on a maximum of 50 days, with just one blast per day, from November 15, 2019

to March 15, 2020. Because only one blast is authorized per day, and this activity would only generate noise for approximately one second, no behavioral response that could rise to the level of take is expected to occur. Therefore, all takes by Level B harassment are expected to arise from TTS, but we expect only a small degree of TTS, which is fully recoverable and not considered injury.

Although the removal of the rock pinnacle would result in the permanent alteration of habitat available for marine mammals and their prey, the affected area would be discountable. Overall, the area impacted by the project is very small compared to the available habitat around Ketchikan. The pinnacle is adjacent to an active marine commercial and industrial area, and is regularly disturbed by human activities. In addition, for all species except humpbacks, there are no known biologically important areas (BIA) near the project zone that would be impacted by the blasting activities. For humpback whales, Southeast Alaska is a seasonally important BIA from spring through late fall (Ferguson *et al.,* 2015), however, Tongass Narrows is not an important portion of this habitat due to development and human presence. Additionally, the work window is not expected to overlap with periods of peak foraging, and the action area represents a small portion of available habitat. While impacts from blasting to fish can be severe, blasting will occur for a relatively short period of 50 days, meaning the duration of impact should also be short. Any impacts on prey that would occur during that period would have at most short-terms effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial, and these insubstantial effects would therefore be unlikely to cause substantial effects on marine mammals at the individual or population level.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Blasting would not occur during fish runs, avoiding impacts during peak foraging periods;
- Only a very small portion of marine mammal habitat would be temporarily impacted;
- The City of Ketchikan would implement mitigation measures including shut down zones for all blasting and other in-water activity to minimize the potential for take by Level A harassment and the severity if it does occur; and
- TTS that will occur is expected to be of a small degree and is recoverable;

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 5, in the *Take Calculation and Estimation* section, presents the number of animals that could be exposed to received noise levels that may result in take by Level A harassment or Level B harassment for the proposed blasting by the City of Ketchikan. Our analysis shows that at most, approximately 20.6 percent of the best population estimates of each affected stock could be taken, but for most species and stocks, the percentage is below 2 percent. There was one stock, minke whale, where the lack of an accepted stock abundance value prevented us from calculating an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales for a portion of the Gulf of Alaska (Zerbini *et al.,* 2006). Given 10 authorized takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted. Therefore, the numbers of animals authorized to be taken for all species, including minke whale, would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an unlikely scenario for pinnipeds, but a possibility for other marine mammals based on their described transit through Tongass Narrows. For pinnipeds, especially harbor seals and Steller sea lions, occurring in the vicinity of the project site, there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

In 2012, the community of Ketchikan had an estimated subsistence take of 22 harbor seals and 0 Steller sea lion (Wolf *et al.,* 2013). Hunting usually occurs in October and November (Alaska Department of Fish and Game (ADF&G) 2009), but there are also records of relatively high harvest in May (Wolfe *et al.,* 2013). All project activities will take place within the industrial area of Tongass Narrows immediately adjacent to Ketchikan where subsistence activities do not generally occur. The project will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where these activities are expected to take place. Some minor, short-term harassment of the harbor seals could occur, but this is not likely to have any measureable effect on subsistence harvest activities in the

region. Additionally, blasting associated with the project is expected to occur from November 15 to March 15. This means that blasting, and the associated harassment of marine mammals will only overlap with a small portion of the expected period of subsistence harvest. Based on the spatial separation and partial temporal separation of blasting activities and subsistence harvest, no changes to availability of subsistence resources are expected to result from the City of Ketchikan's proposed activities.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from City of Ketchikan's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources consults internally, in this case with the NMFS Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Mexico DPS humpback whales which are listed under the ESA. The NMFS Office of Protected Resources has requested initiation of Section 7 consultation with the NMFS Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of Ketchikan for conducting blasting near Ketchikan, Alaska in 2019 and 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed underwater blasting. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an expedited public comment period (15 days) when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal)..

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 21, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–05826 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG815

Meeting of the Advisory Committee to the United States Delegation to the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting to be held April 15–16, 2019.

DATES: The open sessions of the Committee meeting will be held on April 15, 2019, 9 a.m. to 4:15 p.m. and April 16, 2019, 10 a.m. to 4 p.m. Closed sessions will be held on April 15, 2019, 4:15 p.m. to 6 p.m., and on April 16, 2019, 8 a.m. to 10 a.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel Miami Airport & Convention Center, 711 NW 72nd Avenue, Miami, Florida 33126.

FOR FURTHER INFORMATION CONTACT: Terra Lederhouse at (301) 427–8360.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on management strategy evaluation and harvest control rule development at ICCAT; the 2018 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment. The agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups for part of the afternoon of April 15, 2019, and for two hours on the morning of April 16, 2019. These sessions are not open to the public, but the results of the Species Working Group discussions will be reported to the full Advisory Committee

during the Committee's open session on April 16, 2019.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 427–8360 at least 5 days prior to the meeting date.

Dated: March 20, 2019.

Paul N. Doremus,

Acting Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2019–05827 Filed 3–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[AFD–1703]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of Intent

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive (exclusive with respect to the field of optical-electronic devices; biological detection, diagnostics and treatment; and solar energy conversion) patent license agreement to UES, Inc., a corporation of the State of Ohio, having a place of business at 4401 Dayton-Xenia Road, Dayton, OH 45432–1894.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, Timothy Barlow, AFMCLO/JAZ, 2240 B Street, Room 260, Wright-Patterson AFB, OH 45433–7109; Phone: (937) 904–5760; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. AFD–1703 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant the partially exclusive patent license agreement for the invention described in:

–U.S. Patent Application Serial No. 15/954,646, filed 17 April 2018, and U.S. Patent Application Serial No. 16/220,773, filed 14 December 2018.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh- Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Carlinda N. Lotson,

Acting Air Force Federal Register Liaison Officer, TSgt, USAF.

[FR Doc. 2019–05859 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, 8 April 2019, from 8:00 a.m. to approximately 5 p.m. and Tuesday, 9 April, 2019, from 8:00 a.m. to approximately 5:00 p.m. Central Standard Time. The meeting will be held in the Air University Commander's Conference Room located in Building 800 at Maxwell Air force Base, AL. The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University.

The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs and will include an out brief from the Air Force Institute of Technology and Community College of the Air Force Subcommittees.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meetings' will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors' should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least ten calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Any member of the public wishing to attend this meeting should contact the Designated Federal Officer listed below at least ten calendar days prior to the meeting for information on base entry procedures.

Agenda: Board of Visitors (BOV) Meeting Agenda (Draft) Maxwell AFB

April 8–9, 2019

Purpose of Meeting: For the AU BOV to provide sound professional counsel that will inform decision-making in areas of education, scholarship and leadership.

1. Call to Order
2. Welcome & Introduction
3. Old Business
4. New Business
5. Executive Session and out-brief

FOR FURTHER INFORMATION CONTACT: Dr. Yolanda Williams, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112- 6335, telephone (334) 462–1002.

Carlinda N. Lotson,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–05821 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with applicable laws and regulations, announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Director, Office of Research and Technology Applications, 1520 Freedman Drive, Suite 227, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Michaels, Office of Research & Technology Applications, (301) 619–4145. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In accordance with 35 U.S.C. 209 (e) and 37 CFR 404.7 (a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to United States Patent 8,501,926, issued August 6, 2013, entitled ''Malaria Vaccine,'' to The Johns Hopkins University, having its principal place of business at 3400 N Charles Street, Baltimore, MD 21218.

Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Director, Office of Research and Technology Applications (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–05848 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0035]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Manpower Data Center, Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Program Management Office, ATTN: Samuel Gregson, 4800 Mark Center Drive, Suite 04E25, Alexandria, VA 22350, or call SPOT–ES PMO at 571–372–1139.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES), OMB Control Number 0704–0460.

Needs and Uses: The information collection requirement is necessary to comply with section 861 of Public Law 110–181 and DoD Instruction 3020.41, ''Operational Contract Support'' and other appropriate policy, Memoranda of Understanding, and regulations. The Department of Defense, the Department of State (DoS), and the United States Agency for International Development (USAID) require that Government contract companies enter their employee's data into the Synchronized Predeployment and Operational Tracker (SPOT) System before contractors are deployed outside of the United States. Any persons who choose not to have data collected will not be entitled to employment opportunities which require this data to be collected.

Affected Public: Business or other for profit.

Annual Burden Hours: 37,114.

Number of Respondents: 964.

Responses per Respondent: 77.

Annual Responses: 74,228.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Data collection on contractors is a condition of DoD contracts when DFARS 252.225–7040, Contractor Personnel Authorized to Accompany

U.S. Armed Forces Deployed Outside the United States, is incorporated. This clause applies when contractors are authorized to accompany U.S. Armed Forces deployed outside of the United States in contingency or peacekeeping operations or other military operations/exercises when designated by the Combatant Commander.

SPOT is the authorized system for contractor accountability and the only system that provides the Letter of Authorization (LOA) which is required to process through a deployment center to, from, or within the designated operational area. The LOA is also required for access to Authorized Government Services (AGS) which are assigned on the LOA for each individual contractor IAW their contract by the responsible Contracting Officer. If the data is not collected to generate the LOA, contractors would not be able to obtain AGS in their deployed locations, including access to dining facilities—limiting their ability to obtain critical life support.

Dated: March 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–05845 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0034]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of Defense Education Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense Education Activity, Early Childhood Education ISS, 4800 Mark Center Dr., Alexandria, VA 22350–1400 or call Tel: (571) 372–6011.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Education Activity (DoDEA), School Registration; DoDEA Form 600 and Sure Start Registration; OMB Control Number 0704–0495.

Needs and Uses: This information collection requirement is necessary to obtain information on Department of Defense military and civilian sponsors and their dependents. The information gathered on the sponsors is used to determine their dependents' enrollment eligibility to attend the Department of Defense Education Activity (DoDEA) schools. This includes determination of enrollment categories, whether tuition-free or tuition-paying, space-required or space-available. Information gathered for students is used for age verification, class and transportation schedules, record attendance, absence and withdrawal, record and monitor student progress, grades, course and grade credits, educational services and placement, activities, student awards, special interest and accomplishments.

Affected Public: Individuals or Households.

Annual Burden Hours: 36,237.5 hours.

Number of Respondents: 72,950.

Responses per Respondent: 1.

Annual Responses: 72,950.

Average Burden per Response: 22.5 minutes.

Frequency: As required.

Student Registration: Respondents are parents of children enrolled in DoDEA Schools. All children are required to be registered in order to attend a DoDEA school.

Sure Start Medical/Dental Examination: Respondents are parents of children enrolled in the DoDEA Sure Start Program. Only a small subset of registrants are required to complete a medical/dental examination.

Dated: March 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–05835 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–HQ–0017]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 26, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Point-of-Sale NAF Hotel Information System and Inns of the Corps Customer Feedback; OMB Control Number 0703–XXXX.

Type of Request: New information collection.

Point-of-Sale System

Annual Burden Hours: 2,500.
Number of Respondents: 15,000.
Responses per Respondent: 1.
Annual Responses: 15,000.
Average Burden per Response: 10 minutes.

Customer Feedback Survey

Annual Burden Hours: 82.5.
Number of Respondents: 1,650.
Responses per Respondent: 1.
Annual Responses: 1,650.
Average Burden per Response: 3 minutes.

Totals

Total Annual Burden Hours: 2,582.5.
Total Number of Respondents: 15,000.
Total Annual Responses: 16,650

Needs and Uses: The information collection requirement is necessary to keep a record of Marine Corps Community Services' (MCCS's) lodging reservations to ensure orderly room assignment and avoid improper booking; to record registration and payment of accounts; to verify proper usage by eligible patrons; for cash control; to gather occupancy data; to determine occupancy breakdown; to account for rentals and furnishings; and to collect data for customer satisfaction and marketing. Patrons are required to present appropriate identification to determine their eligibility to access MCCS Lodging's facilities and services.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 21, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–05786 Filed 3–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; College Assistance Migrant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On February 8, 2019, we published in the **Federal Register** (FR) a notice inviting applications (NIA) for fiscal year (FY) 2019 for the College Assistance Migrant Program (CAMP), Catalog of Federal Domestic Assistance (CFDA) number 84.149A. This notice corrects the national target pertaining to a performance measure that applies to this program.

DATES: Deadline for Transmittal of Applications: April 9, 2019.

Deadline for Intergovernmental Review: June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Carla Kirksey, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E337, Washington, DC 20202. Telephone: (202) 260–2114. Email: *carla.kirksey@ed.gov.*

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

SUPPLEMENTARY INFORMATION: On February 8, 2019, we published in the **Federal Register** an NIA for this program (84 FR 2835) that identified national targets for CAMP Government Performance and Results Act of 1993 (GPRA) performance measures. Additionally, we posted an application package for the program on the Department's website at *https://www2.ed.gov/programs/camp/fy19-camp-application.pdf* and *Grants.gov.*

Since that time, we have discovered that the CAMP NIA incorrectly identifies the national target for GPRA measure 2, the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education, as 85 percent for FY 2019. The correct national target for GPRA measure 2 is 90 percent for FY 2019. Additionally, the CAMP application package instructions incorrectly identify the GPRA measure 2 as 85 percent on page 60; the application package instructions, however, correctly identify the CAMP GPRA measure 2 as 90 percent on page 8 of the application package. We previously announced in the publicly available CAMP FY 2017 Program Performance Report that the CAMP GPRA measure 2 is 90 percent for FY 2019. We are publishing this correction notice to clarify that the CAMP GPRA measure 2 remains 90 percent for FY 2019.

Applicants that have already submitted timely applications may submit a revised application that contains the correct national target for CAMP GPRA measure 2, but are not required to do so. Applicants that have already submitted timely applications and do not submit a revised application will still be expected to meet the correct national target for CAMP GPRA measure 2 identified in this notice.

Instructions for submitting an application can be found in the NIA.

Correction: In FR Document 2019–01701, on page 2839, in the first column, in the second paragraph of the section entitled ''Performance Measures,'' we replace ''The national target for GPRA measure 2 for FY 2019 is that 85 percent of CAMP participants continue their postsecondary education after completing the first academic year of college'' with ''The national target for GPRA measure 2 for FY 2019 is that 90 percent of CAMP participants continue their postsecondary education after completing the first academic year of college.''

Program Authority: 20 U.S.C. 1070d–2.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 22, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–05883 Filed 3–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0034]

Agency Information Collection Activities; Comment Request; National Teacher and Principal Survey of 2020–2021 (NTPS 2020–21) Preliminary Field Activities

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 28, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–

2019–ICCD–0034. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Teacher and Principal Survey of 2020–2021 (NTPS 2020–21) Preliminary Field Activities.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,525.

Total Estimated Number of Annual Burden Hours: 3,322.

Abstract: The National Teacher and Principal Survey (NTPS), conducted biennially by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. The next administration of NTPS was originally planned for 2019–20 and the NTPS 2019–20 preliminary activities were approved in October 2018 with a change request approved in February 2019 (OMB# 1850–0598 v.24–25). However, due to staffing shortages at NCES, NCES had to delay the NTPS 2019–20 administration by one year, to the 2020–21 school year. No changes are planned to the materials and procedures approved for NTPS preliminary activities (OMB# 1850–0598 v.24–25), besides delaying all activities by one year. This request provides the dates, procedures, and materials for NTPS 2020–21 preliminary activities. After NTPS 2020–21, NCES plans to administer the next NTPS three years later, during the 2023–24 school year. Following the 2023–24 administration, NTPS is expected to be conducted every 2 years if resources allow.

Dated: March 21, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–05767 Filed 3–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 30, 2019, 9 a.m. to 6 p.m.; Friday, May 31, 2019, 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Cooke, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–25/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–4140, and email *Michael.Cooke@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

May 30–31, 2019

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee,

you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Michael Cooke, (301) 903–4140 or by email at: *Michael.Cooke@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel website: *http://science.energy.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on March 21, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–05774 Filed 3–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10822–015]

Town of Canton, Connecticut; Canton Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On February 26, 2019, the Town of Canton, Connecticut (Transferor) and Canton Hydro LLC (Transferee) filed an application for the transfer of license for the Upper Collinsville Hydroelectric Project No. 10822. The proposed project is to be located on the Farmington River in Hartford County, Connecticut.

The applicants seek Commission approval to transfer the license for the Upper Collinsville Hydroelectric Project from the Transferor to the Transferee.

Applicants Contact: For Transferor: Mr. Robert H. Skinner, Chief Administrative Officer, Town of Canton, Connecticut, 4 Market Street, P.O. Box 168, Collinsville, CT 06022–0168, Telephone: 860–693–7837, Email: *RSkinner@townofcantonct.org;* and Mr. Todd J. Griset, PretiFlaherty, One City Center, P.O. Box 9546, Portland, ME 04112–9546, Telephone: 207–623–5300, Email: *tgriset@preti.com.*

For Transferee: Mr. Claus Maier, Canton Hydro LLC, Quellenstrasse 44, Zurich 8005 Switzerland, Telephone: +41746005226, Email: *claus@cantonhydro.com;* Mr. Armin Moehrle, Canton Hydro LLC, 606 East Oakland Boulevard, Chicago, IL 60653, Telephone: 773–395–3680, Email: *armin@cantonhydro.com;* and Mr. Joshua E. Adrian, and Mr. Donald H. Clarke, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street NW, Suite 800, Washington, DC 20036, Telephone: 202–467–6370, Emails: *jea@dwgp.com,* and *dhc@dwgp.com.*

FERC Contact: Anumzziatta Purchiaroni, 202–502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–10822–015.

Dated: March 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05800 Filed 3–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14956–000]

Midwest Energy Recycling, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 14, 2018, Midwest Energy Recycling, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Granite Falls County Pumped Storage Project to be located near the Minnesota River and the City of Granite Falls, in Yellow Medicine County, Minnesota. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new circular 120-acre concrete lined rockfill embankment (upper reservoir) having a total storage capacity of 3,960 acre-feet with a maximum pond elevation level of 965 feet mean sea level (msl); (2) a new 2,900-foot by 1,425-foot rectangular lower reservoir with a total storage capacity of 3,960 acre-feet with a maximum pond elevation of 1,530 feet msl; (3) a new 100-foot-diameter, reinforced concrete (morning glory type) intake connected to a vertical 2,800-foot-long by 18-foot-diameter steel lined penstock; (4) a new 200-foot-long by 70-foot-wide by 130-foot-high reinforced concrete powerhouse containing two new 333-megawatt (MW) reversible pump-turbine units with a total plant rating of 666 MW; (5) a new 50-foot-wide, 240-foot-long, 40-foot high transformer gallery; (6); a new 200 to 1,000-foot-long, 230-kilovolt transmission line extending from the transformer gallery to a new 200-foot by 200-foot substation; and (7) appurtenant facilities. The estimated annual generation of the Chippewa County Pumped Storage Project would be 1,450 gigawatt-hours.

Applicant Contact: Mr. Douglas A. Spaulding, Nelson Energy, LLC, 8441 Wayzata Boulevard, Suite 101, Golden Valley, MN 55426; phone: (952) 544–8133.

FERC Contact: Tyrone Williams; phone: (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance,

please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14956–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14956) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05798 Filed 3–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM Interconnection, L.L.C. Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C. (PJM) Members Committee and Markets and Reliability Committee meetings, as well as other PJM committee, subcommittee or task force meetings.[1] The Commission and Commission staff may attend the following meetings:

PJM Members Committee

- March 21, 2019 (Wilmington, DE)
- April 25, 2019 (Audubon, PA)
- May 7, 2019 (Cambridge, MD)
- June 27, 2019 (Wilmington, DE)
- August 22, 2019 (Wilmington, DE)
- September 26, 2019 (Audubon, PA)
- October 31, 2019 (Wilmington, DE)
- December 5, 2019 (Audubon, PA)

PJM Markets and Reliability Committee

- March 21, 2019 (Wilmington, DE)
- April 25, 2019 (Audubon, PA)
- May 30, 2019 (Audubon, PA)
- June 27, 2019 (Wilmington, DE)
- July 25, 2019 (Wilmington, DE)
- August 22, 2019 (Wilmington, DE)
- September 26, 2019 (Audubon, PA)
- October 31, 2019 (Wilmington, DE)
- December 5, 2019 (Audubon, PA)
- December 19, 2019 (Audubon, PA)

PJM Market Implementation Committee

- April 10, 2019 (Audubon, PA)
- May 15, 2019 (Audubon, PA)
- June 12, 2019 (Audubon, PA)
- July 10, 2019 (Audubon, PA)
- August 7, 2019 (Audubon, PA)
- September 11, 2019 (Audubon, PA)
- October 16, 2019 (Audubon, PA)
- November 13, 2019 (Audubon, PA)
- December 11, 2019 (Audubon, PA)

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission, including the following currently pending proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER12–2708, *Potomac-Appalachian Transmission Highline, LLC. et. al.*

Docket No. ER13–535, *PJM Interconnection, L.L.C.*

Docket No. EL14–37, *PJM Interconnection, L.L.C.*

Docket No. ER14–972, *PJM Interconnection, L.L.C.*

Docket Nos. EL14–48, ER18–988, *PJM Interconnection, L.L.C.*

Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*

Docket Nos. EL15–73, ER16–372, *PJM Interconnection, L.L.C.*

Docket No. EL15–79, *TranSource, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–95, *Maryland and Delaware State Commissions* v. *PJM Interconnection, L.L.C.*

Docket No. ER15–1387, *PJM Interconnection, L.L.C.*

Docket Nos. ER15–2562, ER15–2563, *PJM Interconnection, L.L.C.*

Docket No. EL16–49, *Calpine Corporation, et. al.,* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–31, *Northern Illinois Municipal Power Agency* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–32, *Old Dominion Electric Cooperative* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–36, *Advanced Energy Management Alliance* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–37, *American Municipal Power, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–62, *Potomac Economics, Ltd.* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–64, *Energy Storage Association* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–65, *Renewable Energy Systems America* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–68, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL17–94, *New York Power Authority* v. *PJM Interconnection, L.L.C. and PJM Transmission Owners*

Docket Nos. ER17–214, ER17–216, *PJM Interconnection, L.L.C.*

Docket No. ER17–349, *PJM Interconnection, L.L.C.*

Docket No. ER17–725, *PJM Interconnection, L.L.C.*

Docket No. ER17–905, *New York Independent System Operator, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. ER17–950, *PJM Interconnection, L.L.C.*

Docket No. ER17–1138, *PJM Interconnection, L.L.C.*

Docket No. ER17–1420, *PJM Interconnection, L.L.C.*

Docket No. ER17–1433, *PJM Interconnection, L.L.C.*

Docket No. ER17–2291, *PJM Interconnection, L.L.C.*

Docket No. EL18–7, *American Electric Power Service Corporation* v. *Midcontinent Independent System Operator, Inc.*

Docket No. EL18–26, *EDF Renewable Energy, Inc.* v. *Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc. and PJM Interconnection, L.L.C.*

Docket No. EL18–34, *PJM Interconnection, L.L.C.*

Docket No. EL18–61, *Public Citizen, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. ER18–87, *PJM Interconnection, L.L.C.*

Docket No. ER18–136, *Midcontinent Independent System Operator, Inc.*

Docket No. ER18–137, *PJM Interconnection, L.L.C.*

Docket Nos. ER18–459, ER18–460, *PJM Interconnection, L.L.C. and Ohio Valley Electric Corporation*

Docket No. ER18–579, *PJM Interconnection, L.L.C.*

Docket No. ER18–614, *PJM Interconnection, L.L.C.*

Docket No. ER18–680, *PJM Interconnection, L.L.C.*

Docket No. EL18–145, *Tilton Energy L.L.C. v PJM Interconnection, L.L.C.*

Docket No. EL18–178, *PJM Interconnection, L.L.C.*

Docket No. ER18–1314, *PJM Interconnection, L.L.C.*

Docket No. EL18–183, *Radford's Run Wind Farm, L.L.C. v PJM Interconnection, L.L.C.*

Docket No. EL18–189, *Independent Power Producers of New York, Inc. v PJM Interconnection, L.L.C.*

[1] For example, PJM subcommittees and task forces of the standing committees (Operating, Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, the Commission and Commission staff may monitor the various meetings posted on the PJM website.

Docket No. ER18–1202, *Appalachian Power Company, et al.,* and *American Municipal Power, Inc. et al.*
Docket No. ER18–1222, *PJM Interconnection, L.L.C.*
Docket No. ER18–1647, *PJM Interconnection, L.L.C.*
Docket No. ER18–1730, *PJM Interconnection, L.L.C*
Docket No. ER18–2102, *PJM Interconnection, L.L.C.*
Docket No. ER18–2350, *PJM Interconnection, L.L.C.*
Docket No. ER18–2401, *PJM Interconnection, L.L.C.*
Docket No. ER19–80, *PJM Interconnection, L.L.C.*
Docket No. ER19–105, *PJM Interconnection, L.L.C.*
Docket No. ER19–210, *PJM Interconnection, L.L.C.*
Docket No. ER19–263, *PJM Interconnection, L.L.C.*
Docket No. EL19–8, *PJM Interconnection, L.L.C.*
Docket No. EL19–27, *Independent Market Monitor for PJM Interconnection, L.L.C. v PJM Interconnection, L.L.C.*
Docket No. EL18–170, *DC Energy, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER18–1686, *PJM Interconnection, L.L.C.*
Docket No. ER18–1688, *PJM Interconnection, L.L.C.*
Docket No. ER18–1222, *PJM Interconnection, L.L.C.*
Docket No. EL18–149, *PSEG Energy Resources & Trade, L.L.C.*
Docket No. ER18–2068, *PJM Interconnection, L.L.C.*
Docket No. ER19–469, *PJM Interconnection, L.L.C.*
Docket No. ER19–511, *PJM Interconnection, L.L.C.*
Docket No. ER19–603, *PJM Interconnection, L.L.C.*
Docket No. ER19–664, *PJM Interconnection, L.L.C.*
Docket No. ER19–945, *PJM Interconnection, L.L.C.*
Docket No. ER19–1012, *PJM Interconnection, L.L.C.*
Docket No. EL19–34, *Brookfield Energy Marketing LP v PJM Interconnection, L.L.C.*
Docket No. EL19–47, *Independent Market Monitor for PJM Interconnection, L.L.C. v PJM Interconnection, L.L.C.*
Docket No. AD18–7, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*

For additional meeting information, see: *http://www.pjm.com/committees-and-groups.aspx* and *http://www.pjm.com/Calendar.aspx.*

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: March 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05799 Filed 3–26–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9991–38–OW]

Open Meeting of the Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Environmental Financial Advisory Board (EFAB) will hold a public meeting on April 17–18, 2019 in Washington, DC. The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of this meeting is to hear from informed speakers on environmental finance issues and EPA priorities; to discuss recommendations from EFAB work products; to discuss changes to the EFAB's process of selecting new topics and developing recommendations; and to discuss stormwater funding and financing. The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Wednesday, April 10, 2019.

DATES: The full board meeting will be held Wednesday, April 17, 2019 and Thursday, April 18, 2018. Members of the public who wish to attend the meeting should register by Wednesday, April 10, 2019 at *https://epaefabapril2019.eventbrite.com.*

ADDRESSES: Intercontinental Washington, DC—The Wharf, 801 Wharf St. SW, Washington, DC 20024.

For Accomodations: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Tara Johnson at (202) 564–6186 or *johnson.tara@epa.gov* at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Dated: March 18, 2019.

Andrew Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2019–05771 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9991–37–OW]

New Risk Assessment and Emergency Response Plan Requirements for Community Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice describes the requirements for community water systems serving more than 3,300 persons to complete risk and resilience assessments and emergency response plans under the America's Water Infrastructure Act (AWIA) of 2018. It also outlines how community water systems can certify the completion of these documents to the EPA. Additionally, today's notice informs community water systems of how to request the return of vulnerability assessments submitted in accordance with the Bioterrorism Act of 2002.

DATES: See the **SUPPLEMENTARY INFORMATION** section for AWIA compliance dates.

FOR FURTHER INFORMATION CONTACT: Nushat Dyson, Water Security Division, Office of Ground Water and Drinking Water (MC 4608T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4674; fax number: (202) 564–3753; email address: *dyson.nushat@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This notice applies to all community water systems serving more than 3,300 persons.

B. How can I get copies of this document?

You may access this **Federal Register** document electronically from the Government Printing Office on the govinfo website for **Federal Register** listings at: *https://www.govinfo.gov/app/collection/FR/.* You may also access it on the EPA's website at: *https://www.epa.gov/waterresilience/americas-water-infrastructure-act-2018-risk-assessments-and-emergency-response-plans.*

C. Background

On October 23, 2018, the America's Water Infrastructure Act (Pub. L. 115–270) was signed into law. Section 2013 of the AWIA amends section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i–2). This section requires community water systems serving more than 3,300 persons to develop or update risk and resilience assessments and emergency response plans. The law specifies the topics that the risk and resilience assessments and emergency response plans must address. It also establishes deadlines by which community water systems must send certifications of completion of the risk and resilience assessments and emergency response plans to the EPA.

Each community water system serving more than 3,300 persons shall submit to the EPA Administrator a certification that the system has conducted a risk and resilience assessment in accordance with the Act prior to—

- March 31, 2020, in the case of systems serving a population of 100,000 or more;
- December 31, 2020, in the case of systems serving a population of 50,000 or more, but less than 100,000; and
- June 30, 2021, in the case of systems serving a population greater than 3,300, but less than 50,000.

Each community water system serving more than 3,300 persons shall also certify its completion of an emergency response plan as soon as reasonably possible, but no later than six months after certifying completion of its risk and resilience assessment.

For purposes of compliance with the AWIA, the EPA interprets the population served under revised section 1433(a)(3) to mean all persons served by the system directly or indirectly. As a result, community water systems should determine their population served based on the number of people the system serves directly, plus the number of people served by any consecutive community water systems. Accordingly, a community water system that provides drinking water to consecutive community water systems (*i.e.,* a ''wholesaler'') must include the population served by those consecutive systems when determining its total population served.

D. Risk and Resilience Assessments

Section 1433(a) of the Safe Drinking Water Act (SDWA) as amended by section 2013 of the AWIA outlines the requirements for risk and resilience assessments as follows: Each community water system serving a population greater than 3,300 persons must assess the risks to, and resilience of, its system. Such an assessment must include—

(1) the risk to the system from malevolent acts and natural hazards;

(2) the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;

(3) the monitoring practices of the system;

(4) the financial infrastructure of the system;

(5) the use, storage, or handling of various chemicals by the system; and

(6) the operation and maintenance of the system.

The assessment may also include an evaluation of capital and operational needs for risk and resilience management for the system.

To assist utilities, the AWIA directs the EPA to provide baseline information on malevolent acts of relevance to community water systems no later than August 1, 2019. This information must include consideration of acts that may—

(1) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(2) otherwise present significant public health or economic concerns to the community served by the system.

E. Emergency Response Plans

No later than six months after certifying completion of its risk and resilience assessment, each system must prepare or revise, where necessary, an emergency response plan that incorporates the findings of the assessment. The plan shall include—

(1) strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system;

(2) plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the community water system to deliver safe drinking water;

(3) actions, procedures, and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative source water options, relocation of water intakes, and construction of flood protection barriers; and

(4) strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system.

Community water systems must, to the extent possible, coordinate with local emergency planning committees established under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 *et seq.*) when preparing or revising a risk and resilience assessment or emergency response plan under the AWIA. Further, systems must maintain a copy of the assessment and emergency response plan (including any revised assessment or plan) for five years after certifying the plan to the EPA.

F. Submitting Certifications to the EPA

The EPA is currently developing a process for community water systems to certify completion of risk assessments and emergency response plans. Three primary options for risk assessment and emergency response plan certification submittals will be: (1) Regular mail; (2) email; and (3) a user-friendly secure online portal. The online submission portal, yet to be developed, will offer community water systems a receipt of their risk assessment or emergency response plan certification submittal; therefore, the EPA recommends that all community water systems use the online portal.

The EPA plans to publish additional resources and tools to assist community water systems with meeting the requirements of the AWIA prior to August 1, 2019. These will include the following:

- Baseline information on malevolent acts of relevance to community water systems as required by SDWA section 1433(a)(2);
- technical assistance fact sheets that describe AWIA compliance requirements, procedures for submitting risk assessment and emergency response plan certifications to the EPA, and how to use EPA tools and resources; and
- new versions of the EPA's Vulnerability Self-Assessment Tool and Emergency Response Plan guidance to assist systems with developing risk assessments and emergency response plans under the AWIA amendments to the Safe Drinking Water Act.

The EPA recommends that community water systems consider submitting risk and resilience assessment and emergency response plan certifications after publication of the baseline information on malevolent acts document, as well as updated risk assessment tools and other guidance. This timing will reduce the chances that a community water system will need to

make corrections to its risk and resilience assessment or emergency response plan after certification.

Community water systems can access *https://www.epa.gov/waterresilience/americas-water-infrastructure-act-2018-risk-assessments-and-emergency-response-plans* to get updated information on the implementation of this section of the law, as well as further details on how to submit risk and resilience assessment and emergency response plan certifications.

G. Third-Party Standards

The EPA does not require water systems to use any designated standards, methods, or tools to conduct the risk and resilience assessments required under revised section 1433(a) or to prepare the emergency response plans required under revised section 1433(b). Rather, community water systems must conduct risk and resilience assessments and prepare emergency response plans in accordance with all the requirements of those sections.

Community water systems may use any standards, methods, or tools that aid the system in meeting the requirements of section 1433. However, regardless of the use of any standard, method, or tool, the community water system is responsible for ensuring that its risk and resilience assessment and emergency response plan fully address all requirements of the SDWA, as amended by the AWIA.

H. Five-Year Review, Revision, and Certification Requirement

Each community water system serving more than 3,300 persons must review its risk and resilience assessment at least once every five years to determine if it should be revised. Upon completion of such a review, the system must submit to the EPA a certification that it has reviewed its assessment and revised it, if applicable.

Further, each community water system serving more than 3,300 persons must revise, where necessary, its emergency response plan at least once every five years after the system completes the required review of its risk and resilience assessment. The emergency response plan must incorporate any findings of the risk and resilience assessment. Upon completion of such a review, but not later than six months after certifying the review of its risk and resilience assessment, the system must submit to the EPA a certification that it has completed its corresponding emergency response plan (which, in the context of a revision, means that it has reviewed its emergency response plan and revised it, if applicable).

I. Final Disposition of Bioterrorism Act Vulnerability Assessments

Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) amended the Safe Water Drinking Act by adding new sections 1433 through 1435 pertaining to improving the security of the nation's drinking water infrastructure. Section 1433 of the Bioterrorism Act required each community water system serving a population greater than 3,300 persons to conduct a vulnerability assessment, certify completion of its assessment, and submit a written copy to the EPA where it would be stored in a secure location. These assessments are now more than 10 years old and are outdated. Pursuant to the EPA's Records Management Policy, the EPA can retire the certifications and assessments.

The EPA intends to destroy the vulnerability assessments using a process that conforms with the information protection requirements of section 1433 of the Bioterrorism Act. Under AWIA section 2013(b)(2), community water systems may request that the EPA return their vulnerability assessments in lieu of destruction. If utilities wish their vulnerability assessments returned, they may submit a letter to the EPA by email. Please email the request letter to *WSD-Outreach@epa.gov* on utility letterhead and include the following information: utility name, PWS ID number, address, and point of contact information for the individual who will be responsible for receiving the vulnerability assessment.

To request the return of the vulnerability assessment prior to destruction, the community water system will need to make the request not later than the initial date by which the community water system must certify a risk and resilience assessment to the EPA as required under section 1433(a) of the Safe Drinking Water Act as amended by section 2013 of the AWIA.

Dated: March 19, 2019.

Jennifer L. McLain,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2019–05770 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0258; FRL–9986–27]

RIN 2070–ZA21

Pesticides; Draft Guidance for Pesticide Registrants on Plant Regulator Label Claims, Including Plant Biostimulants; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft guidance document entitled ''Guidance for Plant Regulator Label Claims, Including Plant Biostimulants.'' Guidance documents are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This draft guidance document is intended to clarify that products with label claims that are considered to be plant regulator claims are subject to regulation as a pesticide.

DATES: Comments must be received on or before May 28, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0258, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT:

For general information contact: Prasad Chumble, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8367; email address: *chumble.prasad@epa.gov.*

For technical information contact: Russell Jones, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–5071; email address: *jones.russell@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

EPA has developed a draft guidance document, entitled ''Guidance for Plant Regulator Label Claims, Including Plant Biostimulants.'' This document is intended to provide guidance to EPA personnel and decisionmakers, and to pesticide registrants. EPA invites comment from prospective guidance users and other stakeholders concerning this draft guidance document.

B. What is the Agency's authority for taking this action?

This draft guidance document is issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y. EPA regulations regarding pesticide registration and exemptions from registration are contained in 40 CFR parts 150 through 189. EPA also provides related non-binding guidance on its website at *https://www.epa.gov/pesticides.*

C. Does this action apply to me?

This draft guidance may be of particular interest to those who are producers of products making labeling claims that are considered to be plant regulator claims by the Agency, thereby subjecting the products to regulation under FIFRA as pesticides. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining if this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Pesticide and Other Agricultural Chemical Manufacturing (NAICS 32532), *e.g.,* pesticide manufacturers or formulators of pesticide products, pesticide importers or any person or company who seeks to register a pesticide.
- Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing (NAICS 325300), *e.g.,* establishments primarily engaged in manufacturing agricultural chemicals, including nitrogenous and phosphoric fertilizer materials, mixed fertilizers, and agricultural and household pest control chemicals.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

D. What are the potential incremental economic impacts of taking this action?

The Agency anticipates that this guidance may reduce confusion, in both the regulated community and regulatory agencies, as to whether specific products are or are not subject to registration as a pesticide under FIFRA. Reducing uncertainty may reduce costs of bringing a product to market; in some situations, uncertainty could deter firms from developing products. To the extent this guidance clarifies what products must be registered and what products do not need to be registered, it will reduce the effort firms expend to determine the appropriate regulatory path. However, these impacts are likely to be small and intangible.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Overview

This draft guidance document provides guidance about plant regulator label claims, including plant biostimulant claims. Plant biostimulants (PBS) are a relatively new, but growing, category of products containing naturally-occurring substances and microbes that are used to stimulate plant growth, enhance resistance to plant pests, and reduce abiotic stress. The increasing popularity of PBS arises from their ability to enhance agricultural productivity by stimulating natural processes in the plant and in soil using substances and microbes already present in the environment. PBS can promote greater water and nutrient use efficiency, but do not provide any nutritionally relevant fertilizer benefit to the plant. PBS products are becoming increasingly attractive for use in sustainable agriculture production systems and integrated pest management (IPM) programs, which in turn can reduce the use of irrigation water, as well as agrochemical supplements and fertilizers.

Statutory definitions for PBS currently do not exist in the United States or overseas and there is no applicable regulatory definition of PBS under FIFRA. The draft guidance does not address or attempt to provide a regulatory definition for ''plant biostimulant.'' The Agency is seeking comment on this draft guidance. The Agency is also seeking comment on whether EPA should develop a definition for plant biostimulants, noting that the development of such a definition would require rulemaking.

In developing the draft guidance, EPA considered whether a PBS product, as understood by EPA, physiologically influences the growth and development of plants in such a way as to be considered plant regulators by the Agency and thereby triggering regulation under FIFRA as a pesticide. FIFRA section 2(u) includes plant regulators, defoliants, desiccants, and nitrogen stabilizers in its definition of a pesticide, so they are subject to federal registration as pesticides under FIFRA. In addition, FIFRA section 2(v) both defines plant regulator and explains which substances are excluded from the definition. Based on the plant regulator definition contained in FIFRA section 2(v), many PBS products and substances may be excluded or exempt from regulation under FIFRA depending upon their intended uses as plant nutrients (*e.g.,* fertilizers), plant inoculants, soil amendments, and vitamin-hormone products. Other PBS products will not involve EPA oversight because they do not fit within the specific FIFRA definition of how a plant regulator functions. A key consideration is what claims are being made on product labels. This draft document is intended to provide guidance on identifying product label claims that are

considered to be plant regulator claims by the Agency, thereby subjecting the products to regulation under FIFRA as pesticides. Examples are provided of both claims that are considered plant regulator claims and claims that are not considered plant regulator claims.

As guidance, this document is not binding on the Agency or any outside parties, and the Agency may depart from it where circumstances warrant and without prior notice. While EPA has made every effort to ensure the accuracy of the discussion in the draft guidance, the obligations of EPA and the regulated community are determined by statutes, regulations, or other legally binding documents. In the event of a conflict between the discussion in the draft guidance document and any statute, regulation, or other legally binding document, the draft guidance document would not be controlling.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

The Office of Management and Budget's (OMB) has determined that this draft guidance document qualifies as a significant guidance document under OMB's Final Bulletin for Agency Good Guidance Practices (*https://www.gpo.gov/fdsys/pkg/FR-2007-01-25/pdf/E7-1066.pdf*). As such, the draft document was submitted to OMB for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes to the document made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017).

C. Paperwork Reduction Act (PRA)

This guidance does not create paperwork burdens that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* The information collection activities associated with pesticide registration are already approved by OMB under OMB Control No. 2070–0060. The corresponding information collection request (ICR) document is entitled ''Application for New and Amended Pesticide Registration'' (EPA ICR No. 0277.16). Clarifying which products are subject to pesticide regulations is not expected to have more than a de minimis impact on the number of products regulated annually and is not, therefore, expected to impact the estimated burdens.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 21, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2019–05879 Filed 3–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1181]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 28, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1181.

Title: Study Area Boundary Data Reporting in Esri Shapefile Format, DA 12–1777 and DA 13–282.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, Local or Tribal Government.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 26 hours for submitting updates; less than 1 hour for recertification. Frequency of Response: On occasion and biennially reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in *47 U.S.C. 254(b)* of the Communications Act of 1934, as amended.

Total Annual Burden: 171 hours.

Total Annual Cost: $3,895.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission uses the study area boundary data collected through 3060–1181 to implement certain universal service reforms. The Universal Service Fund supports the deployment of voice and broadband-capable infrastructure in rural, high cost areas. High-cost support is granted to a carrier based on the characteristics of its ''study area,'' the geographic area served by an incumbent local exchange carrier within a state. Therefore, complete and accurate study area boundary data are essential for calculating a carrier's costs and expenses, which in turn determine the amount of support that carrier can receive to serve high-cost areas. In December 2012, the Commission

submitted a request for emergency preapproval of this collection, which the Office of Management and Budget (OMB) granted on January 23, 2013. On June 12, 2013, the Commission submitted a request for a three-year extension of the collection to July 31, 2016 (78 FR 34382), which OMB approved on July 31, 2013 (78 FR 76312). Initial study area boundaries were submitted in 2013. These maps were submitted via a secure internet-browser web interface developed and maintained by the Commission. If a study area boundary changes, filers are required to submit, via this interface, revised boundary data incorporating such changes by March 15 of the year following the change. In addition, all filers are required to recertify their study area boundaries every two years.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–05880 Filed 3–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *CCF Holding Company, Jonesboro, Georgia;* to acquire Providence Bank, Alpharetta, Georgia.

Board of Governors of the Federal Reserve System, March 22, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–05864 Filed 3–26–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Federal Reserve Payments Study (FR 3066; OMB No. 7100–0351).

DATES: Comments must be submitted on or before May 28, 2019.

ADDRESSES: You may submit comments, identified by FR 3066, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Federal Reserve Payments Study.

Agency form number: FR 3066a, FR 3066b.

OMB control number: 7100–0351.

Frequency: Annual.

Respondents: Depository and financial institutions, general-purpose payment networks, third-party payment processors, issuers of private-label cards, and providers of various alternative payment initiation methods and systems.

Estimated number of respondents: FR 3066a: 495; FR 3066b: 82.

Estimated average hours per response: FR 3066a: 22 hours; FR 3066b: 8 hours.

Estimated annual burden hours: FR 3066a: 10,890 hours; FR 3066b: 656 hours.

General description of report: These surveys help to support the Federal Reserve System's (Federal Reserve's) role in the payments system.[1] The FR 3066a and FR 3066b would consist of a full set of surveys for 2019 and, following the pattern established in the previous three-year period, smaller versions of the surveys for 2020 and 2021. The reference period for each survey is the previous calendar year. The Federal Reserve Payments Study (FRPS) publishes aggregate estimates of payment volumes and related information derived from the surveys.

Proposed revisions: Proposed revisions to the survey questions reflect an increased focus on payments fraud and security concerns, adaptations to new developments in payments technology, feedback from responding institutions, and experience from analyzing the survey outcomes. Some questions would be added as a result, but more questions would be removed, resulting in a net reduction in questions for 2019 compared with 2016.

As authorized, the Board reduced the number of questions included in the 2017 and 2018 annual supplemental surveys.[2] They also included some revisions to questions within the scope of authorization for those surveys, which helped to inform some of the proposed revisions. The proposed revisions for the 2019 triennial survey in comparison to the 2016 triennial surveys are described below.

FR 3066a. This survey seeks to collect information on volumes of payments and related activities from depository institutions and general-purpose credit card issuers, including commercial banks, savings institutions, and credit unions, divided into sections corresponding to payment types as listed below. The survey is structured to collect volume totals across the enterprise, meaning either a separate survey for unaffiliated depository institutions or a combined survey for sets of affiliated depository institutions organized under a holding company. Surveys are organized to collect separate total volumes for sections divided by payment type, followed by allocations of totals within sections that provide information about volumes of various processing methods, technologies, and usage. The survey generally includes an allocation of the total of each type of section-level payment into consumer and business volumes. Other kinds of allocations vary by section.

The Board proposes to make changes to categorical questions to provide clarity and to make them consistent with the proposed changes to volume questions. The Board proposes to distribute questions currently in the unauthorized third-party fraud into their respective payment type sections. Revisions to the fraud questions are discussed separately at the end of this section.

A description of the proposed survey questionnaire employed for FR 3066a, and proposed revisions to the 2019 survey compared with the 2016 survey, is as follows:

1. *Affiliates:* FR 3066a requests that survey participants report data at the holding company level for the entire enterprise, including all affiliate depository institutions, if applicable. To ensure accuracy, confirmation of these affiliates is requested. In the current survey, a simple listing of affiliated depository institutions is provided, and broad confirmation of its accuracy is requested. The Board proposes a revised version of the affiliates question, which would be included in a separate affiliates section. This revised question requests confirmation of whether or not the volumes in each section of the survey includes activity associated with the individual affiliated depository institutions. This more detailed information will accommodate occasional difficulties in providing complete information for some sections, and provide for more accurate validation of reported data.

2. *Institution Profile:* The institution profile section includes questions regarding the number and value of transaction deposit accounts of consumers and businesses (sometimes called checking accounts, negotiable order of withdrawal (NOW) accounts, or share draft accounts), and related retail and wholesale sweep accounts to understand the relationships between the accounts and payments. The Board proposes to remove the categorical question regarding whether the institution provides card-acquiring services.

3. *Checks:* The check section collects information about volumes of checks paid, deposited, and returned. The Board proposes to discontinue questions on check deposit allocations and only retain the question on the volume of total checks deposited. As a result, the survey would no longer track a variety of volumes and trends including consumer and business check deposits, remote deposit capture methods, including consumer mobile deposits, as well as paper check deposits at branches, automated teller machines (ATMs), and wholesale vaults. The survey would also no longer track remotely created checks. Check payments and returns questions would remain the same.

4. *Automated Clearing House (ACH):* The ACH section collects information about the volumes of originations and receipts of ACH transfers, and outgoing returns. The Board proposes to discontinue questions on ACH offsets, and a variety of details on ACH returns.[3]

[1] The Federal Reserve plays a vital role in the U.S. payments system, fostering its safety and efficiency, and providing a variety of financial services to depository institutions.

[2] Reports and survey instruments in previous years are available at the Federal Reserve Payments Study website (*https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm*).

[3] Offset entries are used internally by some depository institutions to bundle several ACH payments, such as a collection of consumer bill payments to a single payee, into one ACH payment. Processing each offset entry may increase the number of payments in a bundle by one and double

The proposed revisions would add questions on direct exchange and same-day settlement volumes. The removal of the offset questions recognizes that the costs of tracking offsets exceed the benefits, that methods of using and tracking offsets are not consistent enough to be estimated separately with precision, and that many respondents lack information about them. Respondents are asked to exclude any offsets, if possible. As a result, however, the Board recognizes that measured ACH volumes will be inflated by an unknown quantity of offsets, which tends to affect value estimates more than number. Values and average values will tend to be inflated, and other ACH measures will also be affected. For example, calculated fraud rates are deflated in cases where offsets cannot be removed.

5. *Wire Transfers:* The wire transfer section includes questions regarding the number and value of wire originations and receipts allocated between network and book transfers. The Board proposes to retain total wire receipts, but remove its subcategories. This reduction in wire receipt details parallels the reduction in details of check deposits.

6. *Non-Prepaid Debit Cards:* The Board proposes to separate the non-prepaid debit and general-purpose prepaid sections of the survey. This change removes a question on the sum of debit and prepaid card transactions, and another on the sum of cash-back from debit and prepaid cards. The general-purpose debit card section includes questions on the volumes of debit card transactions with various allocations, as well as the number tally of consumer and business cards in force and with purchase activity. The Board proposes to remove the question on the number of chip-enabled cards in force. Cash-back at the point of sale is also collected from respondents. Allocations between card-present and card-not present are proposed to be replaced with allocations between in-person and remote, following the change implemented in the current 3066b. The Board proposes to remove the questions allocating card-present transactions between PIN, signature-authenticated, and other (no signature required), replacing them with an allocation of in-person transactions between those with and without a PIN. Card-not-present would be replaced with remote, and an allocation of remote between domestic (U.S.) payee and foreign (cross-border) payee would be added. The Board proposes to add a question on the number of debit card transactions made via a digital wallet, including tokenized digital wallet, to include an allocation between in-person and remote transaction volumes.

7. *General-Purpose Prepaid Cards:* The general-purpose prepaid card section includes questions on the total number and value of prepaid card transactions with various allocations, as well as the number tally of consumer and business cards in force and with purchase activity. The section includes questions on accounts and balances for reloadable and non-reloadable prepaid card accounts. The Board proposes changes that parallel those described in the general-purpose debit cards section.

8. *General-Purpose Credit Cards:* The general-purpose credit card section includes questions on the total volumes of credit card transactions with various allocations, as well as the number of consumer and business cards in force and with purchase activity. The Board proposes changes to transaction volume and card tally allocations that parallel those described in the general-purpose debit cards section. This section also includes questions on accounts and balances for business and consumer credit card accounts. For consumer accounts, it includes allocations between accounts with current balances only and with revolving balances. The Board proposes to modify and expand the allocations to include, zero balance, current balance only, revolving balance only, and current and revolving balances. These proposed revisions are intended to separately collect the portions of current activity-only accounts that have zero and nonzero balances and the portions of balances in accounts with revolving and current amounts. The Board proposes to add questions on general-purpose cobranded cards, in order to obtain volumes of non-network card payments. The change is expected to provide a more complete picture of the use of credit cards for payments (and possibly, rewards) versus borrowing. The Board proposes to remove questions on non-network transactions, along with the allocation between balance transfers and convenience checks.

9. *Cash:* The cash section includes questions on the volumes of cash withdrawals and deposits by the common channels used by depository institution customers, as well as questions pertaining to cash terminals. A key part of the section covers the number and value of total ATM cash withdrawals including allocations for ATM withdrawals that are on-us and ''foreign'' (meaning via an ATM owned by another depository institution). Of the questions related to cash withdrawals, the Board proposes to only retain those which allocate cash withdrawals by location and account type. The Board proposes to remove number tallies of debit and prepaid cards in force with ATM access and with ATM withdrawal activity, allocations of cash withdrawals to prepaid card program accounts, tallies of debit and prepaid cards in force and with ATM withdrawals, allocation of cash withdrawals to consumer, business, and prepaid card program accounts. The ATM terminals section which includes tallies of the number of active ATM terminals, including allocations to owned and sponsored ATMs at branch locations and offsite, and tallies of active and total numbers of remote currency management terminals, is proposed to be removed. The Board also proposes to add a question to allocate ATM withdrawals between domestic and cross-border volumes.

10. *Alternative Payment Initiation Methods:* The alternative payments section asks questions about volumes of online and mobile bill and person-to-person payments. The Board proposes to remove business-to-consumer and business-to-business online and mobile payment volume questions. The Board proposes to remove the online and mobile allocations for consumer bill payments. The Board also proposes to remove these allocations for consumer person-to-person online and mobile transfers and to add allocations between ''on-us'' and ''off-us'' transfers.[4]

11. *Unauthorized Third-Party Payment Fraud:* As noted, the Board proposed to distribute unauthorized third-party fraud questions to the corresponding sections of the survey. The Board proposes to add allocations of fraudulent ACH credits originated between same-day and non-same-day settlement, and allocations of fraudulent ACH debits received between same-day and non-same-day settlement. The Board proposes to add allocations of fraudulent wire transfers originated between domestic and foreign payees. The Board proposes to add a question on total fraudulent wire transfer receipts. The Board proposes revisions to allocations of fraudulent debit, prepaid, and credit card volumes to collect fraudulent in-person volumes, which would replace the current card-present volumes, along with adding sub-allocations to fraudulent volumes with

the amount of value. Offset entries can be processed in house or over the network.

[4] ''On-us'' transfer originations include person-to-person transfers between two accountholders at the same institution. ''Off-us'' transfer originations include person-to-person transfers between two accountholders at different institutions.

and without PIN authentication. The Board proposes revisions to collect fraudulent remote volumes, which would replace the current card-not-present volumes, along with sub-allocations to fraudulent domestic and cross-border volumes. The Board proposes to add allocations for fraudulent domestic and cross-border ATM withdrawals. The Board proposes to add fraudulent online or mobile person-to-person transfers, along with adding allocations to ''on-us'' and ''off-us.''

FR 3066b. These surveys are conducted as a census of known payment networks, processors, card issuers, covered alternative and innovative payment initiation methods and systems, and a stratified, representative random sample of transit system operators. In general, respondents are asked to provide information about any payments volume processed during the survey data collection period, by various categories listed below. Respondents are asked to report on a range of categories between total transactions and net purchase transactions, which includes total authorized transactions, chargebacks, adjustments, and returns. Most details in the surveys involve allocations of net, authorized, and settled transactions, and corresponding allocations of related third-party fraudulent transactions. Surveys request allocations of totals between consumer and business payments, as well as domestic and cross-border payments. Surveys also request the distribution of transactions into size categories, and for applicable surveys, the number tally of active and in-force cards.

A description of each of the different surveys employed for FR 3066b, and proposed revisions to the 2019 surveys compared with the 2016 surveys, is as follows:

1. *General-Purpose Card Network Surveys (credit card, debit card, and prepaid card):* These surveys collect the total number and value of all types of network payments initiated by the acquirer and made with U.S. general-purpose credit, debit, and prepaid cards issued on U.S.-domiciled accounts carrying a network brand. Data are allocated to the in-person and remote payment channels, and further allocated to payment technology, venue, and authentication types. The surveys also seek to collect number and value of total issuer-reported card fraud types, such as lost or stolen, counterfeit, and account takeover. The Board proposes moderate changes to the current card network surveys. As in the current surveys, card payment volumes would be tracked by entry mode. However, the Board proposes to modify the types of entry modes to include a breakout of contact and contactless chip cards for in-person transaction volumes with chip-authentication, but to remove the allocation between those initiated with or without a mobile device. In addition, the Board proposes to narrow the in-person card verification method categories to only track payment volumes with or without a PIN. The Board proposes to add allocations of cross-border transactions between in-person and remote. For fraudulent payments, the Board's proposed question changes would mirror those for total payments.[5] In addition, the surveys would request distributions across fraudulent transaction sizes, and allocations of fraudulent payments between consumer and business, as well as for domestic and cross-border. Questions requesting the number tally of cards and the allocation of the number of terminals with and without chip-acceptance functionality activated are proposed to be removed.

2. *Private-Label Credit Card Merchant Issuer Survey, Private-Label Credit Card Processor Survey, General-Purpose Prepaid Card Processor Survey, and Private-Label Prepaid Card Issuer and Processor Survey:* These surveys collect the number and value of total payments originated from U.S.-domiciled accounts and made with a private-label credit or charge card, general-purpose prepaid card, and private-label prepaid card. Similar to card network surveys, the Board proposes to restructure the payment entry mode and card verification method categories to better reflect standard industry reports, but in less detail compared with the general-purpose card networks.

3. *Electronic Benefits Transfer (EBT) Card Processor Survey:* The EBT survey collects data on payments initiated with an EBT card to access funds and/or make purchases at approved merchants in accordance with government-administered program rules, and to receive cash. Transaction types in the proposed EBT survey are allocated between the main types of EBT card programs. The Board proposes to remove value distribution questions, card-acceptance terminal questions, and the number tally of cards in the previous year.

4. *Automated Teller Machine (ATM) Card Network Survey:* The ATM card network survey collects cash withdrawals and other transaction volumes made with U.S. cards, which are issued for U.S.-domiciled accounts and originated on the respondent's ATM network, including non-prepaid debit cards, prepaid debit cards, and credit cards. The survey also seeks to collect the number and value of issuer-reported fraudulent card payment types, such as lost or stolen, counterfeit, and account takeover. Respondents consist of the domestic ATM networks in the U.S. Most respondents also operate general-purpose debit card networks. The Board proposes to add total and fraudulent cash withdrawal volume allocations between domestic and cross-border for domestic accounts, as well as cross border cash withdrawal volume transactions at a domestic ATM for accounts domiciled outside the U.S.

5. *Automated Teller Machine (ATM) Card Processor:* The Board proposes to remove this survey of independent service operators.

6. *Alternative Payment Initiation Methods Processor Surveys:* Surveys cover alternative, innovative, and emerging payment initiation methods and systems. The Board proposes changes to three of these surveys.

a. *Toll Collection Processor Payment Survey:* The Board proposes a simplification of the title, changing the title from ''Electronic Toll and Payment Collection Processor Survey.'' The Board also proposes some clarifying changes to question descriptions, and removal of the questions on the distribution of transactions into various size categories.

b. *Online Payment Authentication Methods Processor Survey:* The survey collects the number and value of online payment authentications by method. The Board proposes to remove the allocations between credit card and PIN debit for the authentication method of e-commerce redirected from the merchant or biller site.

c. *Transit System Operator Payment Survey:* The Board proposes changes to this survey to first request an allocation of unlinked rides between those requiring payment and free rides.

The Board proposes to discontinue the FR 3066c data collection process of check images used to estimate the proportion of checks by categories such as payers, payees, and purposes. FRB Atlanta may continue a version of the check sample survey using sampled information from their own check

[5] The survey was modified to include the term ''forward'' when discussing non-return ACH credit and debit transfers that are originated by the responding institution. Industry practitioners use the term to distinguish that type of transfer from returned transfers they also originate of each type. By indicating that the transaction is forward, the term helps to clarify confusion arising from the fact that ACH can be used to originate and receive both credit transfers, associated with outgoing funds, and debit transfers, associated with incoming funds.

processing operations, an approach that started in 2015.

The Board also proposes to discontinue the FR 3066d, which was designed to serve as a supplemental collection to the FR 3066a and FR 3066b, targeted at specific payment issues. If such a supplement is needed in the future, the Federal Reserve would likely utilize the Payments Research Survey (FR 3067; OMB Control No. 7100–0355).

Legal authorization and confidentiality: The information obtained from the FR 3066 may be used in support of the Board's development and implementation of regulations, interpretations, and supervisory guidance for various payments, consumer protection, and other laws. Therefore, the FR 3066 is authorized pursuant to the Board's authority under the following statutes:

- Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008)
- Sections 904 and 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693b, 1693o–2)
- Section 105 of the Truth In Lending Act (15 U.S.C. 1604)
- Section 15 of the Check Clearing for the 21st Century Act (12 U.S.C. 5014) Sections 11, 11A, 13, and 16 of the Federal Reserve Act (12 U.S.C. 248, 248a, 342, 248–1, 360, and 411)

The FR 3066 is voluntary. Information collected on the FR 3066 is granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

Consultation outside the agency: As part of the routine execution of the surveys, the contractors that recruit responses and collect survey data engage with potential participants to review, explain, and obtain feedback about the surveys. These conversations help to develop or revise proposed questions to make them as relevant to and substantively consistent with industry practices as possible.

Board of Governors of the Federal Reserve System, March 21, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–05823 Filed 3–26–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *John Scott Thomson, as trustee of both the John H. Thomson Residuary Trust and the FJT Grandchildren's Trust, John Scott Thomson and Stephanie Carol Thomson, as co-trustees of the Thomson Grandchildren's Trust, together with Stephanie Carol Thomson as co-trustee of the John Scott Thomson Family Trust, all of Cresco, Iowa;* to retain voting shares of How-Win Development Co. and thereby to indirectly retain CUSB Bank, both of Cresco, Iowa.

Board of Governors of the Federal Reserve System, March 22, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–05862 Filed 3–26–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 2019.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *SNBNY Holdings, Gibraltar, Gibraltar;* to acquire voting shares of Safra National Bank of New York, New York.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Boyd Rothwell and Diana Rothwell, Little Rock, Arkansas, individually and as members of a family control group that also includes PRS, LLC, Little Rock, Arkansas and Lois Rothwell, Bush, Louisiana;* to retain shares of Capital Bancshares, Inc., Little Rock, Arkansas, and thereby retain shares of Capital Bank, Little Rock, Arkansas.

2. *G. Warren Stephenson and Martha Stephenson individually, and as members of a family control group, which also includes PRS, LLC, all of Little Rock, Arkansas;* to retain shares of Capital Bancshares, Inc., Little Rock, Arkansas, and thereby retain shares of Capital Bank, Little Rock, Arkansas.

C. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Joseph W. Bosshard, Boulder, Colorado, Makenzie B. Bosshard, Minneapolis, Minnesota, Carlista M. Bosshard, Auburn Alabama, and John Bosshard, Chicago, Illinois, for approval to retain shares of Bosshard Banco, Ltd., La Crosse, Wisconsin (Bosshard Banco) and join the Bosshard Family Group that controls Bosshard Banco. In addition, Andrew R. Bosshard, La Crosse, Wisconsin;* to acquire additional shares and retain shares of Bosshard Banco, and thereby retain and acquire shares of First National Bank of Bangor, Wisconsin, and Intercity State Bank, Schofield, Wisconsin.

D. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Lonnie Ken Pilgrim, individually and as trustee of the The Lonnie Ken Pilgrim 2003 GST Trust, The Lonnie Ken Pilgrim 1999 Issue Trust, The LKP 2012*

GST Trust, The Greta Pilgrim Owens 2003 GST Trust, The Greta Pilgrim Owens 1999 Issue Trust, and The GPO 2012 Trust, Pittsburg, Texas; Steve Capps, individually and as trustee of the The Lonnie Ken Pilgrim 2003 GST Trust, The Lonnie Ken Pilgrim 1999 Issue Trust, The LKP 2012 GST Trust, The Greta Pilgrim Owens 2003 GST Trust, The Greta Pilgrim Owens 1999 Issue Trust, and The GPO 2012 Trust, Mount Pleasant, Texas; Lanny Brenner, as trustee of the The Lonnie Ken Pilgrim 2003 GST Trust, The Lonnie Ken Pilgrim 1999 Issue Trust, The LKP 2012 GST Trust, The Greta Pilgrim Owens 2003 GST Trust, The Greta Pilgrim Owens 1999 Issue Trust, and The GPO 2012 Trust, Pittsburg, Texas; Greta Pilgrim Henson, Dallas, Texas; Greta Gail Pilgrim Simpson, Tyler, Texas; and Lonnie Jaggers Pilgrim, Mount Vernon, Texas, as a group acting in concert; to retain shares of Pilgrim Bancorporation, Mount Pleasant, Texas, and indirectly retain shares of Pilgrim Bank, Pittsburg, Texas.

Board of Governors of the Federal Reserve System, March 21, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–05773 Filed 3–26–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Complex Institution Liquidity Monitoring Report (FR 2052a; OMB No. 7100–0361). The revisions are applicable as of March 31, 2019.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following information collection:

Report title: Complex Institution Liquidity Monitoring Report.

Agency form number: FR 2052a.

OMB control number: 7100–0361.

Effective date: March 31, 2019.

Frequency: Monthly, or each business day (daily).

Respondents: Certain U.S. bank holding companies (BHCs), U.S. savings and loan holding companies (SLHCs), and foreign banking organizations (FBOs) with U.S. assets.

Estimated number of respondents: Monthly, 40; daily, 12.

Estimated average hours per response: Monthly, 120 hours; daily, 220 hours.

Estimated annual burden hours: 717,600 hours.

General description of report: The FR 2052a is filed by U.S. BHCs and SLHCs that are subject to the Liquidity Coverage Ratio rule (LCR rule) as a ''covered depository institution holding company,'' as defined in section 249.3 of the Board's Regulation WW (12 CFR 249.3) (collectively, U.S. firms),[1] with total consolidated assets of $50 billion or more and FBOs, as defined by section 211.21(o) of the Board's Regulation K and including any U.S. bank holding company that is a subsidiary of an FBO, with combined U.S. assets of $50 billion or more.[2] Reporting frequency is based on the asset size of the firm and whether it has been identified as a firm supervised through the Large Institution Supervision Coordinating Committee of the Board. The FR 2052a is used to monitor the overall liquidity profile of certain institutions supervised by the Board. These data provide detailed information on the liquidity risks within different business lines (*e.g.,* financing of securities positions, prime brokerage activities). In particular, these data serve as part of the Board's supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress. Analyses of systemic and idiosyncratic liquidity risk issues are then used to inform the Board's supervisory processes, including the preparation of analytical reports that detail funding vulnerabilities.

Legal authorization and confidentiality: The FR 2052a report is authorized to be collected from BHCs pursuant to section 5(c) of the Bank Holding Company Act (BHC Act), 12 U.S.C. 1844(c); from FBOs pursuant to section 8(a) of the International Banking Act, 12 U.S.C. 3106(a); from certain BHCs and FBOs pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), 12 U.S.C. 5365; and from SLHCs pursuant to section 10(b)(2) and (g) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(b)(2) and (g). Section 5(c) of the BHC Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition, and section 8(a) of the International Banking Act subjects FBOs to the provisions of the BHC Act. Section 165 of the Dodd-Frank Act requires the Board to establish prudential standards, including liquidity requirements, for certain BHCs and FBOs. Section 10(g) of HOLA authorizes the Board to collect reports from SLHCs. The FR 2052a report is mandatory for covered institutions.

The information required to be provided on the FR 2052a is collected as part of the Board's supervisory

[1] BHCs that are subsidiaries of an FBO are excluded from the definition of ''U.S firm.''

[2] The Board has stated that it will not take action to require bank holding companies or savings and loan holding companies with less than $100 billion in total consolidated assets to comply with certain existing regulatory requirements, including the requirements to report the 2052a. *See* Statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (July 6, 2018), available at *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.* Subsequently, the Board invited comment on a proposal that would more closely match the regulations for large banking organizations with their risk profiles, which included proposals that would affect the scope of application of the FR 2052a. The press release is available at *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.*

process. Accordingly, such information is afforded confidential treatment under exemption 8 of the Freedom of Information Act (FOIA), which protects information from disclosure that is contained in or related to the examination or supervision of a financial institution. 5 U.S.C. 552(b)(8). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects trade secrets or confidential commercial or financial information. 5 U.S.C. 552(b)(4). In limited circumstances, aggregate data for multiple respondents, which does not reveal the identity of any individual respondent, may be released.

Current actions: On December 28, 2019, the Board published a notice in the **Federal Register** (83 FR 67285) requesting public comment for 60 days on the extension, with revision, of the FR 2052a. On September 12, 2018, the Board temporarily approved [3] certain revisions to the FR 2052a relating to the Economic Growth, Regulatory Relief, and Consumer Protection Act and the Board's related interim final rule amending the treatment of certain municipal obligations that are liquid and readily marketable as high quality liquid assets (HQLAs) under the LCR rule.[4] Specifically, the Board amended the Assets Category Table in Appendix III of the FR 2052a such that the description of the asset classification code ''IG2–Q'' is sufficiently inclusive of municipal obligations that may qualify as HQLAs under the LCR rule. The comment period for this notice expired on February 26, 2019. The Board did not receive any comments. The revisions will be implemented as proposed. Board of Governors of the Federal Reserve System, March 22, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–05841 Filed 3–26–19; 8:45 am]

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[3] *See* 83 FR 46163 (September 12, 2018).

[4] *See* 83 FR 44451 (August 31, 2018).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP19–004, Network of Forecasting Centers to Improve Forecast Accuracy and Communication for Seasonal and Pandemic Influenza.

Date: May 22, 2019.

Time: 10:00 a.m.–5:00 p.m., (EDT).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE, Mailstop E60, Atlanta, Georgia 30329, (404) 718–8833, *gca5@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–05832 Filed 3–26–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Cancellation of Meeting: The Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, notice is hereby given that the meeting of the Secretary's Advisory Committee on Human Research Protections (SACHRP), scheduled to occur March 27 and 28, 2019, at 6700B Rockledge Drive, Suite 1102, Bethesda MD 20892, has been cancelled. The **Federal Register** Notice announcing this meeting appeared March 11, 2019. The next meeting is scheduled for July 30 and 31, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

Dated: March 19, 2019.

Julia G. Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2019–05801 Filed 3–26–19; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–17–123: Biomarkers for Diabetes, Digestive, Kidney and Urologic Diseases using NIDDK Biorepository Samples (R01).

Date: May 6, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–17–270: NIDDK Central Repositories Non-renewable Sample Access (X01).

Date: May 7, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pragmatic Research and Natural Experiments.

Date: May 17, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 DEmocracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05876 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee, NIA–N.

Date: September 26–27, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2w200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05792 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RC2 Review Panel High Impact, Interdisciplinary Science in NIDDK Research Areas.

Date: April 5, 2019.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05793 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Predoctoral to Postdoctoral Fellow Transition Award (F99/K00).

Date: June 3–4, 2019.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and

Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Bethesda, MD 20892–9750, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Institutional Training and Education.

Date: June 11, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Bethesda, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: June 12–13, 2019.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Delia Tang, M.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892–9750, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: June 20–21, 2019

Time: 4:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Bethesda, MD 20892–9750, 240–276–6132, *tushar.deb@nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel; Molecular and Cellular Analysis Technologies.

Date: June 27–28, 2019.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05790 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Accelerating the Pace of Drug Abuse Research Part 2.

Date: April 16, 2019.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05875 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; FEB2019 Cycle 31 NExT SEP Committee Meeting.

Date: April 24, 2019.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Conference Room J, Bethesda, MD 20892.

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, MD 20850, (240) 276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05791 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Member Conflict: Traumatic Brain Injury, Cerebravascular Disorders, and Epilepsy.

Date: April 4, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@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 21, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05788 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Disease and Pathophysiology of the Retina and of the Anterior Eye.

Date: April 24, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205, MSC 7846, Bethesda, MD 20892 (301), 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Tobacco Regulatory Science.

Date: May 20, 2019.

Time: 8:00 a.m. to 5:00 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: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular and Respiratory Sciences NIH Research Enhancement Award Review.

Date: May 29, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20892, 301–435–0904, *3sara.ahlgren@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–05789 Filed 3–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0057]

Agency Information Collection Activities: Country of Origin Marking Requirements for Containers or Holders

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 28, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0057 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema,

Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651–0057.

Abstract: Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, requires each imported article of foreign origin, or its container, to be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container permits, with the English name of the country of origin. The marking informs the ultimate purchaser in the United States the name of the country in which the article was manufactured or produced. The marking requirements for containers are provided for by 19 CFR 134.22(b).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 40.

Estimated Number of Total Annual Responses: 10,000.

Estimated Time per Response: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Dated: March 22, 2019.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–05887 Filed 3–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

[1653–0026]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: G–79A; Information Relating to Beneficiary of Private Bill

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This information collection was previously published in the **Federal Register** (83 FR 55197) on November 2, 2018, allowing for a 60-day comment period. ICE received no comments during this period. Based on better estimates, ICE is making an adjustment from the 60-day notice to reflect a decrease in the number of respondents. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 26, 2019.

ADDRESSES: Interested persons are invited to submit written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1653–0026.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies 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 agencies 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, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* G–79A; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary State, Local, or Tribal Government. This form is used by ICE to obtain information from beneficiaries and/or interested parties in Private Bill cases when requested to report by the Committee on the Judiciary.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: 35 responses at 90 minutes (1.5 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 52.5 annual burden hours.

Dated: March 21, 2019.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2019–05784 Filed 3–26–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Transportation Security Officer (TSO) Medical Questionnaire

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0032, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure their qualifications to perform TSO duties pursuant to sec. 111 of the Aviation and Transportation Security Act (ATSA).

DATES: Send your comments by April 26, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 6, 2018, 83 FR 62879.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Transportation Security Officer (TSO) Medical Questionnaire.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0032.

Forms(s): Transportation Security Officer Medical Questionnaire.

Affected Public: Applicants for employment as a TSO with TSA.

Abstract: TSA currently collects relevant medical information from TSO candidates for the purpose of assessing whether the candidates meet the medical qualification standards the agency has established pursuant to ATSA (49 U.S.C. 44935). TSA collects this information through a medical questionnaire completed by TSO candidates. The medical questionnaire form evaluates a candidate's physical and medical qualifications to be a TSO, including visual and aural acuity, physical coordination, and motor skills. TSA is revising the collection to no longer collect additional information through the further evaluation forms completed by TSO candidates' health care providers.

Number of Respondents: 22,500.

Estimated Annual Burden Hours: An estimated 37,125 hours annually.

Dated: March 21, 2019.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2019–05780 Filed 3–26–19; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–10]

30-Day Notice of Proposed Information Collection: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* April 26, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 26, 2018 at 83 FR 60440.

A. Overview of Information Collection

Title of Information Collection: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary.

OMB Approval Number: 2510–0006.

Type of Request: Extension of a currently approved collection.

Description of the need for the information and proposed use: Mortgagees of FHA-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to the Secretary. In connection with the assignment, legal documents (*e.g.,* mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The instructions contained in the Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage describe the documents to be submitted and the procedures for submission.

The Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage, in its current form and structure, can be found at *https://www.hud.gov/sites/documents/LEGINSTRFULLINSBEN.PDF*. HUD proposes to revise this document to reflect changes in the multifamily rental and healthcare programs since 2011, address physical documentation requirements for electronic UCC filings, update instructions for Section 232-insured loans that were processed under LEAN and/or portfolio structures, and other clarifying changes to reflect current HUD requirements and policies, as well as current practices in real estate, title insurance and mortgage financing transactions.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Legal Instructions Concerning Applications for Full-Insurance Benefits—HUD Form-xxxx	11.00	1.00	11.00	26.00	286.00	$37.26	$10,656.36

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 20, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–05888 Filed 3–26–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7010–N–01]

60-day Notice of Proposed Information Collection: Comment Request; Notice of Application for Designation as a Single Family Foreclosure Commissioner

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 28, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Nacheshia Foxx, Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Ariel Pereira, Associate General Counsel, Legislation and Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410–0500, telephone (202 708–1793) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Notice of Application for Designation As a Single Family Foreclosure Commissioner (SF Mortgage Foreclosure Act of 1994).

OMB Control Number: 2510–0012.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclsoure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclsoure Commissioners to do this. HUD needs the Notice and resulting appliations for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Agency form numbers, if applicable: None.

Members of affected public: Individuals or Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
30	1	.5	15

Status of the proposed information collection: Reinstatement of collection.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 22, 2019.

Ariel Pereira,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2019–05889 Filed 3–26–19; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–615–617 and 731–TA–1432–1434 (Preliminary)]

Fabricated Structural Steel from Canada, China, and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fabricated structural steel from Canada, China, and Mexico, provided for in subheadings 7308.90.30, 7308.90.60, and 7308.90.95 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of Canada, China, and Mexico.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On February 4, 2019, the American Institute of Steel Construction (''AISC''), LLC, Chicago, IL (amended on February 21, 2019 to the Full Member Subgroup of the AISC), filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of fabricated structural steel from Canada, China, and Mexico and LTFV imports of fabricated structural steel from Canada, China, and Mexico. Accordingly, effective February 4, 2019, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation Nos. 701–TA–615–617 and antidumping duty investigation Nos. 731–TA–1432–1434 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 11, 2019 (84 FR 3245). The conference was held in Washington, DC, on February 25, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on March 22, 2019.[3] The views of the Commission are contained in USITC Publication 4878 (March 2019), entitled *Fabricated Structural Steel from Canada, China, and Mexico: Investigation Nos. 701–TA–615–617 and 731–TA–1432–1434 (Preliminary).*

By order of the Commission.

Issued: March 22, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–05884 Filed 3–26–19; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 84 FR 7330 (March 4, 2019) and 84 FR 7339 (March 4, 2019).

[3] Because the federal government in Washington, DC was closed on February 20, 2019, as a result of inclement weather, all statutory deadlines have been tolled by one day.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1140]

Certain Multi-Stage Fuel Vapor Canister Systems and Activated Carbon Components Thereof: Notice of Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) issued by the presiding administrative law judge (''ALJ''), granting a motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 2018, based on a complaint filed by Ingevity Corp. and Ingevity South Carolina, LLC, both of North Charleston, South Carolina (together, ''Ingevity''). 83 FR 64356 (Dec. 14, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 multi-stage fuel vapor canister systems and activated carbon components thereof by reason of infringement of certain claims of U.S. Patent No. RE38,844. *Id.* The Commission's notice of investigation named as respondents MAHLE Filter Systems North America, Inc. of Murfreesboro, Tennessee; MAHLE Filter Systems Japan Corp. of Saitama, Japan; MAHLE Sistemas de Filtracion de Mexico de C.V. of Monterrey, Mexico; MAHLE Filter Systems Canada, ULC of Tilbury, Canada; Kuraray Co., Ltd. of Tokyo, Japan; Kuraray America, Inc. of Houston, Texas; and Nagamine Manufacturing Co., Ltd. of Manno, Japan. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On February 19, 2019, Ingevity filed an unopposed motion to amend the complaint and notice of investigation to remove respondents Kuraray Co., Ltd. and Kuraray America, Inc. (together, ''Kuraray''), and to add as a respondent Calgon Carbon Corporation (''Calgon Carbon''). Ingevity argued that the amendment is necessary because Kuraray transferred its North American carbon business to Calgon Carbon. No party filed a response to the motion.

On February 26, 2019, the ALJ, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), issued the subject ID, granting the motion to amend the complaint and notice of investigation. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 21, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–05830 Filed 3–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Hyundai Oilbank Co., Ltd., et al.; Proposed Final Judgments and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that proposed Final Judgments, Stipulations, and a Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States* v. *Hyundai Oilbank Co., Ltd., et al.,* Case No. 2:19–cv–1037. On March 20, 2019, the United States filed a Complaint alleging that between 2005 and 2016, Hyundai Oilbank Co., Ltd. (''Hyundai Oilbank'') and S-Oil Corporation (''S-Oil''), along with other co-conspirators, conspired to rig bids for Posts, Camps & Stations (PC&S) and Army and Air Force Exchange Service (AAFES) fuel supply contracts with the U.S. military in South Korea, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. A proposed Final Judgment for each Defendant, filed at the same time as the Complaint, requires Hyundai Oilbank and S-Oil to pay the United States, respectively, $39,100,000 and $12,980,000. In addition, each Defendant has agreed to cooperate with further civil investigative and judicial proceedings and to institute an antitrust compliance program.

Copies of the Complaint, proposed Final Judgments, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Southern District of Ohio. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 5th Street NW, Suite 8000, Washington, DC 20530.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the Southern District of Ohio Eastern Division

UNITED STATES OF AMERICA, Plaintiff, v. *HYUNDAI OILBANK CO., LTD, 182, Pyeongsin 2-ro, Daesan-eup, Seosan-si, Chungcheongnam-do, South Korea, and S-OIL CORPORATION, 192, Baekbeom-ro, Mapo-gu, Seoul, South Korea,* Defendants.

CASE NO. 2:19–cv–1037

COMPLAINT: VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable monetary relief and recover damages

from Hyundai Oilbank Co., Ltd. and S-Oil Corporation for conspiring to rig bids and fix prices, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, on the supply of fuel to the U.S. military for its operations in South Korea.

I. INTRODUCTION

1. Since the end of the Korean War, the U.S. armed forces have maintained a significant presence in South Korea, protecting American interests in the region and safeguarding peace for the Korean people. To perform this important mission, American service members depend on fuel to power their bases and military vehicles. The U.S. military procures this fuel from oil refiners located in South Korea through a competitive bidding process.

2. For at least a decade, rather than engage in fair and honest competition, Defendants and their co-conspirators defrauded the U.S. military by fixing prices and rigging bids for the contracts to supply this fuel. Defendants met and communicated in secret with other large South Korean oil refiners and logistics companies, and pre-determined which conspirator would win each contract. Defendants or their co-conspirators then fraudulently submitted collusive bids to the U.S. military. Through this scheme, Defendants reaped vastly higher profit margins on the fuel they supplied to the U.S. military than on the fuel they sold to the South Korean military and to private parties.

3. As a result of this conduct, Defendants and their co-conspirators illegally overcharged American taxpayers by well over $100 million. This conspiracy unreasonably restrained trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Defendants have agreed to plead guilty to one count of a superseding indictment charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct, and in this civil action, the United States seeks compensation for the injuries it incurred as a result of this conspiracy.

II. DEFENDANTS

4. Hyundai Oilbank Co., Ltd. (''Hyundai Oilbank'') is an oil company headquartered in Seosan, South Korea. Hyundai Oilbank refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. During the conspiracy, Hyundai Oilbank partnered with a logistics firm (''Company A'') to supply fuel to U.S. military installations in South Korea, with Company A acting as the prime contractor under the relevant contracts.

5. S-Oil Corporation (''S-Oil'') is an oil company headquartered in Seoul, South Korea. S-Oil refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. Beginning in 2009, S-Oil partnered with Hanjin Transportation Co., Ltd. (''Hanjin'') to supply fuel to U.S. military installations in South Korea, with Hanjin acting as the prime contractor under the relevant contracts.

6. Other persons, not named as defendants in this action, participated as co-conspirators in the offense alleged in this Complaint and performed acts and made statements in furtherance thereof. These co-conspirators include, among others, GS Caltex Corporation (''GS Caltex''), Hanjin, SK Energy Co., Ltd. (''SK Energy''), and Company A.

7. Whenever this Complaint refers to any act, deed, or transaction of any business entity, it means that the business entity engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

III. JURISDICTION AND VENUE

8. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and Section 4A of the Clayton Act, 15 U.S.C. § 15a, seeking equitable relief, including equitable monetary remedies, and damages from Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. This Court has subject matter jurisdiction over this action under 15 U.S.C. §§ 4 and 15a and 28 U.S.C. §§ 1331 and 1337.

10. Defendants have consented to venue and personal jurisdiction in this district for the purpose of this Complaint.

11. Defendants or their co-conspirators entered into contracts with the U.S. military to supply and deliver fuel to U.S. military installations in South Korea. Under the terms of these contracts, Defendants or their co-conspirators agreed that the laws of the United States would govern all contractual disputes and that U.S. administrative bodies and courts would have exclusive jurisdiction to resolve all such disputes. To be eligible to enter into these contracts, Defendants or their co-conspirators registered in databases located in the United States. For certain contracts, Defendants or their co-conspirators submitted bids to U.S. Department of Defense offices in the United States. After being awarded these contracts, Defendants or their co-conspirators submitted invoices to and received payments from U.S. Department of Defense offices in Columbus, Ohio, which included use of wires and mails located in the United States.

12. Through these contracts with the U.S. military, Defendants' activities had a direct, substantial, and reasonably foreseeable effect on interstate commerce, import trade or commerce, and commerce with foreign nations. Defendants' conspiracy had a substantial and intended effect in the United States. Defendants caused U.S. Department of Defense agencies to pay non-competitive prices for the supply of fuel to U.S. military installations. Defendants or their co-conspirators also caused a U.S. Department of Defense agency located in the Southern District of Ohio to transfer U.S. dollars to their foreign bank accounts.

IV. BACKGROUND

13. From at least March 2005 and continuing until at least October 2016 (''the Relevant Period''), the U.S. military procured fuel for its installations in South Korea through competitive solicitation processes. Oil companies, either independently or in conjunction with a logistics company, submitted bids in response to these solicitations.

14. The conduct at issue relates to two types of contracts to supply fuel to the U.S. military for use in South Korea: Post, Camps, and Stations (''PC&S'') contracts and Army and Air Force Exchange Services (''AAFES'') contracts.

15. PC&S contracts are issued and administered by the Defense Logistics Agency (''DLA''), a combat support agency in the U.S. Department of Defense. DLA, formerly known as the Defense Energy Support Center, is headquartered in Fort Belvoir, Virginia. The fuel procured under PC&S contracts is used for military vehicles and to heat U.S. military buildings. During the Relevant Period, PC&S contracts ran for a term of three or four years. DLA issued PC&S solicitations listing the fuel requirements for installations across South Korea, with each delivery location identified by a separate line item. Bidders offered a price for each line item on which they chose to bid. DLA awarded contracts to the bidders offering the lowest price for each line item. The Defense Finance and Accounting Service (''DFAS''), a finance and accounting agency of the U.S. Department of Defense, wired payments to the PC&S contract awardees from its office in Columbus, Ohio.

16. AAFES is an agency of the Department of Defense headquartered in

Dallas, Texas. AAFES operates official retail stores (known as ''exchanges'') on U.S. Army and Air Force installations worldwide, which U.S. military personnel and their families use to purchase everyday goods and services, including gasoline for use in their personal vehicles. AAFES procures fuel for these stores via contracts awarded through a competitive solicitation process. The term of AAFES contracts is typically two years, but may be extended for additional years. In 2008, AAFES issued a solicitation that listed the fuel requirements for installations in South Korea. Unlike DLA, AAFES awarded the entire 2008 contract to the bidder offering the lowest price across all the listed locations.

V. DEFENDANTS' UNLAWFUL CONDUCT

17. From at least March 2005 and continuing until at least October 2016, Defendants and their co-conspirators engaged in a series of meetings, telephone conversations, e-mails, and other communications to rig bids and fix prices for the supply of fuel to U.S. military installations in South Korea.

2006 PC&S and 2008 AAFES Contracts

18. GS Caltex, SK Energy, Hyundai Oilbank, and Company A conspired to rig bids and fix prices on the 2006 PC&S contracts, which were issued in response to solicitation SP0600-05-R-0063, supplemental solicitation SP0600-05-0063-0001, and their amendments. The term of the 2006 PC&S contracts covered the supply of fuel from February 2006 through July 2009.

19. Between early 2005 and mid-2006, GS Caltex, SK Energy, Hyundai Oilbank, and other conspirators met multiple times and exchanged phone calls and e-mails to allocate the line items in the solicitations for the 2006 PC&S contracts. For each line item allocated to a different co-conspirator, the other conspirators agreed not to bid or to bid high enough to ensure that they would not win that item. Through these communications, these conspirators agreed to inflate their bids to produce higher profit margins. DLA awarded the 2006 PC&S line items according to the allocations made by the conspiracy.

20. As part of their discussions related to the 2006 PC&S contracts, GS Caltex, Hyundai Oilbank, and other conspirators agreed not to compete with SK Energy in bidding for the 2008 AAFES contract. In 2008, GS Caltex, Hyundai Oilbank, and other conspirators honored their agreement: GS Caltex bid significantly above the bid submitted by SK Energy for the AAFES contract, while Hyundai Oilbank and Company A declined to bid even after AAFES explicitly requested their participation in the bidding. The initial term of the 2008 AAFES contract ran from July 2008 to July 2010; the contract was later extended through July 2013. As envisioned by the conspiracy, AAFES awarded the 2008 contract to SK Energy.

2009 PC&S Contracts

21. Continuing their conspiracy, Defendants and other co-conspirators conspired to rig bids and fix prices for the 2009 PC&S contracts, which were issued in response to solicitation SP0600-08-R-0233. Hanjin and S-Oil joined the conspiracy for the purpose of bidding on the solicitation for the 2009 PC&S contracts. Hanjin and S-Oil partnered to bid jointly on the 2009 PC&S contracts, with S-Oil providing the fuel and Hanjin providing transportation and logistics. The term of the 2009 PC&S contracts covered the supply of fuel from October 2009 through August 2013.

22. Between late 2008 and mid-2009, Defendants and other co-conspirators met multiple times and exchanged phone calls and e-mails to allocate the line items in the solicitation for the 2009 PC&S contracts. As in 2006, these conspirators agreed to bid high so as to not win line items allocated to other co-conspirators. The original conspirators agreed to allocate to Hanjin and S-Oil certain line items that had previously been allocated to the original conspirators.

23. With one exception, DLA awarded the 2009 PC&S contracts in line with the allocations made by the Defendants and other co-conspirators. Hyundai Oilbank and Company A accidentally won one line item that the conspiracy had allocated to GS Caltex. To remedy this misallocation, Company A, Hyundai Oilbank, and GS Caltex agreed that GS Caltex, rather than Hyundai Oilbank, would supply Company A with the fuel procured under this line item.

2013 PC&S Contracts

24. Similar to 2006 and 2009, Defendants and other co-conspirators conspired to rig bids and fix prices for the 2013 PC&S contracts, which were issued in response to solicitation SP0600-12-R-0332. The term of the 2013 PC&S Contract covered the supply of fuel from August 2013 through July 2016.

25. Defendants and other co-conspirators communicated via phone calls and e-mails to allocate and set the price for each line item in the solicitation for the 2013 PC&S contracts. Defendants and other co-conspirators believed that they had an agreement as to their bidding strategy and pricing for the 2013 PC&S contracts. As a result of this agreement, they bid higher prices than they would have in a competitive process.

26. However, Hanjin and S-Oil submitted bids for the 2013 PC&S contracts below the prices set by the other co-conspirators. Although lower than the pricing agreed upon by the conspirators, Hanjin and S-Oil still submitted bids above a competitive, non-collusive price, knowing that they would likely win the contracts because the other conspirators would bid even higher prices.

27. As a result of their bidding strategy, Hanjin and S-Oil jointly won nearly all the line items in the 2013 PC&S contracts. As in 2009, S-Oil was to provide the fuel for these line items, and Hanjin was to provide transportation and logistics. GS Caltex and other co-conspirators won a few, small line items; SK Energy won none. DLA made inflated payments under the 2013 PC&S contracts through October 2016.

28. After the award of the 2013 PC&S contracts, Hanjin, S-Oil, and GS Caltex reached an understanding that GS Caltex, rather than S-Oil, would supply Hanjin with fuel for certain line items. Under this side agreement, Hanjin paid a much lower price to GS Caltex for fuel than the price it previously had agreed to pay S-Oil to acquire fuel for those line items. However, the price that Hanjin paid to GS Caltex exceeded a competitive price for fuel.

VI. VIOLATIONS ALLEGED

29. The United States incorporates by reference the allegations in paragraphs 1 through 28.

30. The conduct of Defendants and their co-conspirators unreasonably restrained trade and harmed competition for the supply of fuel to the U.S. military in South Korea in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

31. The United States was injured as a result of the unlawful conduct because it paid more for the supply of fuel than it would have had the Defendants and their co-conspirators engaged in fair competition.

VII. REQUEST FOR RELIEF

32. The United States requests that this Court:

(a) adjudge that Defendants' and their co-conspirators' conduct constitutes an unreasonable restraint of interstate commerce, import trade or commerce, and commerce with foreign nations in

violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

(b) award the United States damages to which it is entitled for the losses incurred as the result of Defendants' and their co-conspirators' conduct;

(c) award the United States equitable disgorgement of the ill-gotten gains obtained by Defendants;

(d) award the United States its costs of this action; and

(e) award the United States other relief that the Court deems just and proper.

Dated: March 20, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Makan Delrahim
Assistant Attorney General for Antitrust

Andrew C. Finch
Principal Deputy Assistant Attorney General

Bernard A. Nigro Jr.
Deputy Assistant Attorney General

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Dated: March 20, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

Benjamin C. Glassman
United States Attorney

By:

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United States District Court for the Southern District of Ohio Eastern Division

UNITED STATES OF AMERICA, Plaintiff, v. *HYUNDAI OILBANK CO., LTD.*, Defendant.

CASE NO. 2:19-cv-1037

PROPOSED FINAL JUDGMENT AS TO DEFENDANT HYUNDAI OILBANK CO., LTD.

WHEREAS Plaintiff, United States of America, filed its Complaint on March 20, 2019, the United States and Defendant Hyundai Oilbank Co., Ltd. (''Hyundai Oilbank''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

WHEREAS, on such date as may be determined by the Court, Hyundai Oilbank will plead guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the ''Plea Agreement'') to Count One of a Superseding Indictment filed in the Southern District of Ohio (the ''Criminal Action'') that alleges a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, relating to the same events giving rise to the allegations described in the Complaint;

WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

NOW, THEREFORE, before the taking of any testimony and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against Hyundai Oilbank under Section 1 of the Sherman Act, 15 U.S.C. §1.

II. APPLICABILITY

This Final Judgment applies to Hyundai Oilbank, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III. PAYMENT

Hyundai Oilbank shall pay to the United States within ten (10) business days of the entry of this Final Judgment the amount of thirty-nine million, one hundred thousand dollars ($39,100,000), less the amount paid (excluding any interest) pursuant to the settlement agreement attached hereto as Attachment 1, to satisfy all civil antitrust claims alleged against Hyundai Oilbank by the United States in the Complaint. Payment of the amount ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Hyundai Oilbank shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514-2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice Antitrust Division, Antitrust Documents Group, 450 5th Street, NW, Suite 1024, Washington, D.C. 20530. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

IV. COOPERATION

Hyundai Oilbank shall cooperate fully with the United States regarding any matter about which Hyundai Oilbank has knowledge or information relating to any ongoing civil investigation, litigation, or other proceeding arising out of any ongoing federal investigation of the subject matter discussed in the Complaint (hereinafter, any such investigation, litigation, or proceeding shall be referred to as a ''Civil Federal Proceeding'').

The United States agrees that any cooperation provided in connection with the Plea Agreement and/or pursuant to the settlement agreement attached hereto as Attachment 1 will be considered cooperation for purposes of this Final Judgment, and the United States will use its reasonable best efforts, where appropriate, to coordinate any requests for cooperation in connection with the Civil Federal Proceeding with requests for cooperation in connection with the Plea Agreement and the settlement agreement attached hereto as Attachment 1, so as to avoid unnecessary duplication and expense.

Hyundai Oilbank's cooperation shall include, but not be limited to, the following:

(a) Upon request, completely and truthfully disclosing and producing, to the offices of the United States and at no expense to the United States, copies of all non-privileged information, documents, materials, and records in its possession (and for any foreign-language information, documents, materials, or records, copies must be produced with an English translation), regardless of their geographic location, about which the United States may inquire in connection with any Civil Federal Proceeding, including but not limited to all information about activities of Hyundai Oilbank and present and

former officers, directors, employees, and agents of Hyundai Oilbank;

(b) Making available in the United States, at no expense to the United States, its present officers, directors, employees, and agents to provide information and/or testimony as requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(c) Using its best efforts to make available in the United States, at no expense to the United States, its former officers, directors, employees, and agents to provide information and/or testimony as requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(d) Providing testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence produced by Hyundai Oilbank in any Civil Federal Proceeding as requested by the United States; and

(e) Completely and truthfully responding to all other inquiries of the United States in connection with any Civil Federal Proceeding.

However, notwithstanding any provision of this Final Judgment, Hyundai Oilbank is not required to: (1) request of its current or former officers, directors, employees, or agents that they forgo seeking the advice of an attorney nor that they act contrary to that advice; (2) take any action against its officers, directors, employees, or agents for following their attorney's advice; or (3) waive any claim of privilege or work product protection.

The obligations of Hyundai Oilbank to cooperate fully with the United States as described in this Section shall cease upon the conclusion of all Civil Federal Proceedings (which may include Civil Federal Proceedings related to the conduct of third parties), including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such Civil Federal Proceeding, at which point the United States will provide written notice to Hyundai Oilbank that its obligations under this Section have expired.

V. ANTITRUST COMPLIANCE PROGRAM

A. Within thirty (30) days after entry of this Final Judgment, Hyundai Oilbank shall appoint an Antitrust Compliance Officer and identify to the United States his or her name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in the Antitrust Compliance Officer position, Hyundai Oilbank shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Hyundai Oilbank's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall institute an antitrust compliance program for the company's employees and directors with responsibility for bidding for any contract with the United States. The antitrust compliance program shall provide at least two hours of training annually on the antitrust laws of the United States, such training to be delivered by an attorney with relevant experience in the field of United States antitrust law.

C. Each Antitrust Compliance Officer shall obtain, within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, from each person subject to Paragraph V.B of this Final Judgment, and thereafter maintaining, a certification that each such person has received the required two hours of annual antitrust training.

D. Each Antitrust Compliance Officer shall communicate annually to all employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the United States antitrust laws.

E. Each Antitrust Compliance Offer shall provide to the United States within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, a written statement as to the fact and manner of Hyundai Oilbank's compliance with Section V of this Final Judgment.

VI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. ENFORCEMNT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Hyundai Oilbank agrees that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Hyundai Oilbank waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Hyundai Oilbank agrees that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Hyundai Oilbank has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Hyundai Oilbank, whether litigated or resolved prior to litigation, Hyundai Oilbank agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

VIII. EXPIRATION OF FINAL JUDGMENT

33. Unless this Court grants an extension, this Final Judgment shall expire seven (7) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court

and Hyundai Oilbank that the continuation of the Final Judgment no longer is necessary or in the public interest.

IX. PUBLIC INTEREST DETERMINATION

34. Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

_____

United States District Judge

ATTACHMENT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (''Agreement'') is entered into among the United States of America, acting through the Civil Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Ohio, on behalf of the Defense Logistics Agency (''DLA'') and the Army and Air Force Exchange Service (''AAFES'') (collectively the ''United States''), Hyundai Oilbank Co., Ltd. (''Hyundai''), and Relator [REDACTED] (hereafter collectively referred to as ''the Parties''), through their authorized representatives.

RECITALS

A. Hyundai is a South Korea-based energy company that produces various petroleum products that it sells to South Korean and international customers, including the United States Department of Defense (''DoD'').

B. On February 28, 2018, Relator, a resident and citizen of South Korea, filed a *qui tam* action in the United States District Court for the Southern District of Ohio captioned *United States ex rel. [REDACTED] v. GS Caltex, et al.*, Civil Action No. [REDACTED], pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the ''Civil FCA Action''). Relator contends that Hyundai conspired with other South Korean entities to rig bids on DoD contracts to supply fuel to U.S. military bases throughout South Korea beginning in 2005 and continuing until 2016, including DLA Post, Camps, and Stations (''PC&S'') contracts executed in 2006, 2009, and 2013, and AAFES contracts executed in 2008.

C. On such date as may be determined by the Court, Hyundai will plead guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the ''Plea Agreement'') to Count One of a Superseding Indictment filed in the Southern District of Ohio (the ''Criminal Action'') that alleges that Hyundai participated in a combination and conspiracy beginning at least in or around March 2005 and continuing until at least in or around October 2016, to suppress and eliminate competition on certain contracts solicited by the DoD to supply fuel to numerous U.S. Army, Navy, Marine, and Air Force installations in South Korea, including PC&S contracts and the 2008 AAFES contract, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

D. Hyundai will execute a Stipulation with the Antitrust Division of the United States Department of Justice in which Hyundai will consent to the entry of a Final Judgment to be filed in *United States v. Hyundai Oilbank Co., Ltd.*, Civil Action No. [to be assigned] (S.D. Ohio) (the ''Civil Antitrust Action'') that will settle any and all civil antitrust claims of the United States against Hyundai arising from any act or offense committed before the date of the Stipulation that was undertaken in furtherance of an attempted or completed antitrust conspiracy involving PC&S and/or AAFES fuel supply contracts with the U.S. military in South Korea during the period 2005 through 2016.

E. The United States contends that it has certain civil claims against Hyundai arising from the conduct described in the Plea Agreement in the Criminal Action and in the Stipulation in the Civil Antitrust Action, as well as the conduct, actions, and claims alleged by Relator in the Civil FCA Action. The conduct referenced in this Paragraph is referred to below as the Covered Conduct.

F. With the exception of any admissions that are made by Hyundai in connection with the Plea Agreement in the Criminal Action, this Settlement Agreement is neither an admission of liability by Hyundai nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1.a. Hyundai agrees to pay to the United States $28,818,814 (''FCA Settlement Amount''), of which $13,266,973 is restitution, by electronic funds transfer no later than thirteen (13) business days after the Effective Date of this Agreement pursuant to written instructions to be provided by the Civil Division of the Department of Justice. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs. The FCA Settlement Amount does not include the Relator's fees and costs, and Hyundai acknowledges that Relator retains all rights to recover such expenses, attorneys' fees, and costs from Hyundai pursuant to 31 U.S.C. § 3730(d).

1.b. If Hyundai's Plea Agreement in the Criminal Action is not accepted by the Court or the Court does not enter a Final Judgment in the Civil Antitrust Action, this Agreement shall be null and void at the option of either the United States or Hyundai. If either the United States or Hyundai exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within five (5) business days of the Court's decision, the Parties will not object and this Agreement will be rescinded and the FCA Settlement Amount shall be returned to Hyundai. If this Agreement is rescinded, Hyundai will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions or proceedings arising from the Covered Conduct that are brought by the United States within ninety (90) calendar days of rescission, except to the extent such defenses were available on the day on which Relator's *qui tam* complaint in the Civil FCA Action was filed.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Hyundai's full payment of the FCA Settlement Amount, the United States releases Hyundai together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of

contract, payment by mistake, unjust enrichment, and fraud.

3. Except as set forth in Paragraph 1 (concerning Relator's claims under 31 U.S.C. § 3730(d)), and conditioned upon Hyundai's full payment of the FCA Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Hyundai together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; the corporate successors and assigns of any of them as well as Hyundai owners, directors, officers, agents, employees and counsel from (a) any civil monetary claim the Relator has or may have for the claims set forth in the Civil FCA Action, the Civil Antitrust Action, the Criminal Action, and the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, up until the date of this Agreement; and (b) all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, state, or Korean statute, law, regulation or doctrine, that Relator, his heirs, successors, attorneys, agents, and assigns otherwise has brought or would have standing to bring as of the date of this Agreement, including any liability to Relator arising from or relating to the claims Relator asserted or could have asserted in the Civil FCA Action, up until the date of this Agreement. Relator represents he does not know of any conduct by Hyundai or any current or former owners, officers, directors, trustees, shareholders, employees, executives, agents, or affiliates that would constitute a violation of the False Claims Act other than the claims set forth in the Civil FCA Action and the Covered Conduct, and Relator acknowledges and agrees that his representations are a material inducement to Hyundai's willingness to enter into this Agreement. Relator further represents and warrants that he and his counsel are the exclusive owner of the rights, claims, and causes of action herein released and none of them have previously assigned, reassigned, or transferred or purported to assign, reassign, or transfer, through bankruptcy or by any other means, any or any portion of any claim, demand, action, cause of action, or other right released or discharged under this Agreement except between themselves and their counsel.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability, except to the extent detailed in the Plea Agreement;

c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for failure to deliver goods or services due; and

i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). The determination of Relator's share, if any, of the FCA Settlement Amount pursuant to 31 U.S.C. § 3730(d) is a matter that shall be handled separately by and between the Relator and the United States, without any direct involvement or input from Hyundai. In connection with this Agreement and this Civil FCA Action, Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns agrees that neither this Agreement, nor any intervention by the United States in the Civil FCA Action in order to dismiss the Civil FCA Action, nor any dismissal of the Civil FCA Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. § 3730(d)(3), bar Relator from sharing in the proceeds of this Agreement, except that the United States will not contend that Relator is barred from sharing in the proceeds of this Agreement pursuant to 31 U.S.C. § 3730(e)(4). Moreover, the United States and Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claims, and that no agreements concerning Relator share have been reached to date.

6. Hyundai waives and shall not assert any defenses Hyundai may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. Hyundai fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Hyundai has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. Conditioned upon Relator's agreement herein, Hyundai fully and finally releases Relator his heirs, successors, assigns, agents and attorneys (the ''Relator Released Parties''), from (a) any civil monetary claim Hyundai has or may have now or in the future against the Relator Released Parties related to the claims set forth in the Civil FCA Action, the Civil Antitrust Action, the Criminal Action, and the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the Relator's investigation and prosecution thereof, including attorney's fees, costs, and expenses of every kind and however denominated, up until the date of this Agreement; and (b) all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, state, or Korean statute, law, regulation or doctrine, that Hyundai otherwise have brought or would have standing to bring as of the date of this Agreement, including any liability to Hyundai arising from or relating to claims Hyundai asserted or could have asserted related to the Civil FCA Action, up until the date of this Agreement. Hyundai further acknowledges and agrees that these representations are a material inducement to Relator's willingness to enter into this Agreement.

9. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Hyundai, and its present or former officers, directors, employees,

shareholders, and agents in connection with:

(1) the matters covered by this Agreement, any related plea agreement, and any related civil antitrust agreement;

(2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

(3) Hyundai's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement, any related plea agreement, and any related civil antitrust agreement;

(5) the payment Hyundai makes to the United States pursuant to this Agreement and any payments that Hyundai may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Hyundai, and Hyundai shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Hyundai shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Hyundai or any of its subsidiaries or affiliates from the United States. Hyundai agrees that the United States, at a minimum, shall be entitled to recoup from Hyundai any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Hyundai's books and records and to disagree with any calculations submitted by Hyundai or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Hyundai, or the effect of any such Unallowable Costs on the amount of such payments.

10. Hyundai agrees to cooperate fully and truthfully with the United States in connection with the Civil FCA Action. The Civil Division of the United States Department of Justice will use reasonable best efforts, where appropriate, to coordinate any requests for cooperation in connection with the Civil FCA Action with requests for cooperation in connection with the Plea Agreement in the Criminal Action and the Civil Antitrust Action, so as to avoid unnecessary duplication and expense. Hyundai's ongoing, full, and truthful cooperation shall include, but not be limited to:

a. upon request by the United States with reasonable notice, producing at the offices of counsel for the United States in Washington, D.C. and not at the expense of the United States, complete and un-redacted copies of all non-privileged documents related to the Covered Conduct wherever located in Hyundai's possession, custody, or control;

b. upon request by the United States with reasonable notice, making current Hyundai directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Hong Kong, unless another place is mutually agreed upon;

c. upon request by the United States with reasonable notice, (i) using best efforts to assist in locating former Hyundai directors, officers, and employees identified by attorneys and/or investigative agents of the United States, and (ii) using best efforts to make any such former Hyundai directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Hong Kong, unless another place is mutually agreed upon; and

d. upon request by the United States with reasonable notice, making current Hyundai directors, officers, and employees available, and using best efforts to make former Hyundai directors, officers, employees available, to testify, consistent with the rights and privileges of such individuals, fully, truthfully, and under oath, without falsely implicating any person or withholding any information, (i) at depositions in the United States, Hong Kong, or any other mutually agreed upon place, (ii) at trial in the United States, and (iii) at any other judicial proceedings wherever located related to the Civil FCA Action.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Upon receipt of the payment of the FCA Settlement Amount described in Paragraph 1.a. above, the Court's acceptance of Hyundai's Plea Agreement in the Criminal Action, and the Court's entry of a Final Judgment in the Civil Antitrust Action, the United States and Relator shall promptly sign and file a Joint Stipulation of Dismissal, with prejudice, of the claims filed against Hyundai in the Civil FCA Action, pursuant to Rule 41(a)(1), which dismissal shall be conditioned on the Court retaining jurisdiction over Relator's claims to a relator's share and recovery of attorneys' fees and costs pursuant to 31 U.S.C. §3730(d).

13. Except with respect to the recovery of Relator's attorneys' fees, expenses, and costs pursuant to 31 U.S.C. §3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter. The Parties agree that Relator and Hyundai will not seek to recover from the United States any costs or fees related to the preparation and performance of this Agreement.

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Ohio. Hyundai agrees that the United States District Court for the Southern District of Ohio has jurisdiction over it for purposes of this case. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties on the subject matter addressed herein. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on Hyundai's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

21. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public, as permitted by order of the Court. This Agreement shall not be released in un-redacted form until the Court unseals the entire Civil FCA Action.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____
BY: _____

Andrew A. Steinberg

Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice

DATED: _____
BY: _____

Mark T. D'Alessandro

Civil Chief, Andrew Malek, Assistant United States Attorney, U.S. Attorney's Office for the Southern District of Ohio

HYUNDAI OILBANK CO., LTD. - DEFENDANT

DATED: _____
BY: _____

Minsung Kim

Authorized Representative of Hyundai Oilbank Co., Ltd.

DATED: _____
BY: _____

Gejaa Gobena
Andrew J. Lee
Kathryn M. Hellings

Hogan Lovells U.S. LLP, Counsel for Hyundai Oilbank Co., Ltd.

[REDACTED]—RELATOR

DATED: _____
BY: _____

[REDACTED]

DATED: _____
BY: _____

Eric Havian
Constantine Cannon LLP, *Counsel for Relator*

United States District Court for the Southern District of Ohio Eastern Division

UNITED STATES OF AMERICA, Plaintiff v. *S-OIL CORPORATION,* Defendant.

CASE NO. 2:19-cv-1037

PROPOSED FINAL JUDGMENT AS TO DEFENDANT S-OIL CORPORATION

WHEREAS Plaintiff, United States of America, filed its Complaint on March 20, 2019, the United States and Defendant S-Oil Corporation (''S-Oil''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

WHEREAS, on such date as may be determined by the Court, S-Oil will plead guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the ''Plea Agreement'') to Count One of a Superseding Indictment filed in the Southern District of Ohio (the ''Criminal Action'') that alleges a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, relating to the same events giving rise to the allegations described in the Complaint;

WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

NOW, THEREFORE, before the taking of any testimony and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against S-Oil under Section 1 of the Sherman Act, 15 U.S.C. §1.

II. APPLICABILITY

This Final Judgment applies to S-Oil, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III. PAYMENT

S-Oil shall pay to the United States within ten (10) business days of the entry of this Final Judgment the amount of twelve million, nine hundred and eighty thousand dollars ($12,980,000), less the amount paid (excluding any interest) pursuant to the settlement agreement attached hereto as Attachment 1, to satisfy all civil antitrust claims alleged against S-Oil by the United States in the Complaint. Payment of the amount ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, S-Oil shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514-2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice Antitrust Division, Antitrust Documents Group, 450 5th Street, NW, Suite 1024, Washington, D.C. 20530. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

IV. COOPERATION

S-Oil shall cooperate fully with the United States regarding any matter about which S-Oil has knowledge or information relating to any ongoing civil investigation, litigation, or other proceeding arising out of any ongoing federal investigation of the subject matter discussed in the Complaint (hereinafter, any such investigation, litigation, or proceeding shall be referred to as a ''Civil Federal Proceeding'').

The United States agrees that any cooperation provided in connection with the Plea Agreement and/or pursuant to the settlement agreement attached hereto as Attachment 1 will be considered cooperation for purposes of this Final Judgment, and the United States will use its reasonable best efforts, where appropriate, to coordinate any requests for cooperation in connection with the Civil Federal Proceeding with requests for cooperation in connection with the Plea Agreement and the settlement agreement attached hereto as Attachment 1, so as to avoid unnecessary duplication and expense.

S-Oil's cooperation shall include, but not be limited to, the following:

(a) Upon request, completely and truthfully disclosing and producing, to the offices of the United States and at no expense to the United States, copies of all non-privileged information, documents, materials, and records in its possession (and for any foreign-language information, documents, materials, or records, copies must be produced with an English translation), regardless of their geographic location, about which the United States may inquire in connection with any Civil Federal Proceeding, including but not limited to all information about activities of S-Oil and present and former officers, directors, employees, and agents of S-Oil;

(b) Making available in the United States, at no expense to the United States, its present officers, directors, employees, and agents to provide information and/or testimony as requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(c) Using its best efforts to make available in the United States, at no expense to the United States, its former officers, directors, employees, and agents to provide information and/or testimony as requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(d) Providing testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence produced by S-Oil in any Civil Federal Proceeding as requested by the United States; and

(e) Completely and truthfully responding to all other inquiries of the United States in connection with any Civil Federal Proceeding.

However, notwithstanding any provision of this Final Judgment, S-Oil is not required to: (1) request of its current or former officers, directors, employees, or agents that they forgo seeking the advice of an attorney nor that they act contrary to that advice; (2) take any action against its officers, directors, employees, or agents for following their attorney's advice; or (3) waive any claim of privilege or work product protection.

The obligations of S-Oil to cooperate fully with the United States as described in this Section shall cease upon the conclusion of all Civil Federal Proceedings (which may include Civil Federal Proceedings related to the conduct of third parties), including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such Civil Federal Proceeding, at which point the United States will provide written notice to S-Oil that its obligations under this Section have expired.

V. ANTITRUST COMPLIANCE PROGRAM

A. Within thirty (30) days after entry of this Final Judgment, S-Oil shall appoint an Antitrust Compliance Officer and identify to the United States his or her name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in the Antitrust Compliance Officer position, S-Oil shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. S-Oil's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall institute an antitrust compliance program for the company's employees and directors with responsibility for bidding for any contract with the United States. The antitrust compliance program shall provide at least two hours of training annually on the antitrust laws of the United States, such training to be delivered by an attorney with relevant experience in the field of United States antitrust law.

C. Each Antitrust Compliance Officer shall obtain, within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, from each person subject to Paragraph V.B of this Final Judgment, and thereafter maintaining, a certification that each such person has received the required two hours of annual antitrust training.

D. Each Antitrust Compliance Officer shall communicate annually to all employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the United States antitrust laws.

E. Each Antitrust Compliance Offer shall provide to the United States within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, a written statement as to the fact and manner of S-Oil's compliance with Section V of this Final Judgment.

V. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VI. Enforcement of final judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. S-Oil agrees that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and S-Oil waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. S-Oil agrees that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that S-Oil has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against S-Oil, whether litigated or resolved prior to litigation, S-Oil agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

VII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven (7) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and S-Oil that the continuation of the Final Judgment no longer is necessary or in the public interest.

VIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

_____

United States District Judge

ATTACHMENT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (''Agreement'') is entered into among the United States of America, acting through the Civil Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Ohio, on behalf of the Defense Logistics Agency (''DLA'') and the Army and Air Force Exchange Service (''AAFES'') (collectively the ''United States''), S-Oil Corporation (''S-Oil''), and Relator [REDACTED] (hereafter collectively referred to as ''the Parties''), through their authorized representatives.

RECITALS

A. S-Oil is a South Korea-based energy company that produces various petroleum products that it sells to South Korean and international customers, including the United States Department of Defense (''DoD'').

B. On February 28, 2018, Relator, a resident and citizen of South Korea, filed a *qui tam* action in the United States District Court for the Southern District of Ohio captioned *United States ex rel. [REDACTED] v. GS Caltex, et al.*, Civil Action No. [REDACTED], pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the ''Civil FCA Action''). Relator contends that S-Oil conspired with other South Korean entities to rig bids on DoD contracts to supply fuel to U.S. military bases throughout South Korea beginning in 2008 and continuing until 2016, including DLA Post, Camps, and Stations (PC&S) contracts executed in 2009 and 2013.

C. On such date as may be determined by the Court, S-Oil will plead guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the ''Plea Agreement'') to Count One of a Superseding Indictment filed in *United States v. S-Oil Corp.*, Criminal Action No. 2:18 Cr. 152 (S.D. Ohio) (the ''Criminal Action'') that will allege that S-Oil participated in a combination and conspiracy beginning at least in or around November or December 2008 and continuing until at least in or around October 2016, to suppress and eliminate competition on certain contracts solicited by the DoD to supply fuel to numerous U.S. Army, Navy, Marine, and Air Force installations in South Korea, including PC&S contracts, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

D. S-Oil will execute a Stipulation with the Antitrust Division of the United States Department of Justice in which S-Oil will consent to the entry of a Final Judgment to be filed in *United States v. S-Oil Corp.*, Civil Action No. [to be assigned] (S.D. Ohio) (the ''Civil Antitrust Action'') that will settle any and all civil antitrust claims of the United States against S-Oil arising from any act or offense committed before the date of the Stipulation that was undertaken in furtherance of an attempted or completed antitrust conspiracy involving PC&S and/or AAFES fuel supply contracts with the U.S. military in South Korea during the period 2005 through 2016.

E. The United States contends that it has certain civil claims against S-Oil arising from the conduct described in the Plea Agreement in the Criminal Action and in the Stipulation in the Civil Antitrust Action, as well as the conduct, actions, and claims alleged by Relator in the Civil FCA Action. The conduct referenced in this Paragraph is referred to below as the Covered Conduct.

F. With the exception of any admissions that are made by S-Oil in connection with the Plea Agreement in the Criminal Action, this Settlement Agreement is neither an admission of liability by S-Oil nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1.a. S-Oil agrees to pay to the United States $12,980,000 (the ''FCA Settlement Amount''), of which $5,900,000 is restitution, by electronic funds transfer no later than ten (10) business days after the Effective Date of this Agreement pursuant to written instructions to be provided by the Civil Division of the Department of Justice.

1.b. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs. The FCA Settlement Amount does not include the Relator's fees and costs, and S-Oil acknowledges that Relator retains all rights to recover such reasonable expenses, attorneys' fees, and costs from S-Oil pursuant to 31 U.S.C. § 3730(d). Relator's claims pursuant to 31 U.S.C. § 3730(d) regarding fees and costs will be addressed pursuant to a separate written agreement between S-Oil and Relator or, in the absence of an agreement, as may be ordered by the Court.

1.c. If S-Oil's Plea Agreement in the Criminal Action is not accepted by the Court or the Court does not enter a Final Judgment in the Civil Antitrust Action, this Agreement shall be null and void at the option of either the United States or S-Oil. If either the United States or S-Oil exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within five (5) business days of the Court's decision, the Parties will not object and this Agreement will be rescinded and the FCA Settlement Amount shall be returned to S-Oil. If this Agreement is rescinded, S-Oil will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions or proceedings arising from the Covered Conduct that are brought by the United States within ninety (90) calendar days of rescission, except to the extent such defenses were available on the day on which Relator's *qui tam* complaint in the Civil FCA Action was filed.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon S-Oil's full payment of the FCA Settlement Amount, the United States fully and finally releases S-Oil together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; corporate affiliates; and the corporate successors and assigns of any of them (the ''S-Oil Released Parties'') from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801–3812; Contract Disputes Act, 41 U.S.C. §§ 7101–7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud, or under any statute creating causes of action for civil damages or civil penalties which the Civil Division of the United States Department of Justice has authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, § 0.45(d).

3. Subject to the exception set forth in Paragraph 1b, and conditioned upon S-Oil's full payment of the FCA Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases the S-Oil Released Parties, officers, directors, trustees, shareholders, employees, executives, agents and the successors and assigns of

any of them, from (a) any civil monetary claim the Relator has or may have for the claims set forth in the Civil FCA Action, the Civil Antitrust Action, the Criminal Action, and the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733, up until the date of this Agreement; and (b) all liability, debts, contracts, covenants, promises, claims, demands, actions, causes of action, rights of subrogation, contribution, indemnity, damages, loss, cost or expenses whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, state, or Korean statute, law, regulation or doctrine, that Relator, his heirs, successors, attorneys, agents, and assigns otherwise has brought or would have standing to bring as of the date of this Agreement, including, without limitation, any liability to Relator arising from or relating to the claims Relator has asserted, may assert or could have asserted in the Civil FCA Action, up until the date of this Agreement. Relator represents and warrants that he and his counsel are the exclusive owner of the rights, claims and causes of action herein released and none of them have previously assigned, reassigned, or transferred or purported to assign, reassign or transfer, through bankruptcy or by any other means, any or any portion of any claim, demand, action, cause of action, or other right released or discharged under this Agreement except between themselves and their counsel. Relator further represents he does not know of any conduct by the S-Oil Released Parties or any current or former owners, officers, directors, trustees, shareholders, employees, executives, agents, or affiliates of the S-Oil Released Parties that would constitute a violation of the False Claims Act other than the claims set forth in the Civil FCA Action and the Covered Conduct, and Relator acknowledges and agrees that his representations are a material inducement to S-Oil's willingness to enter into this Agreement.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability, except to the extent detailed in the Plea Agreement;

c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for failure to deliver goods or services due; and

i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). The determination of Relator's share, if any, of the FCA Settlement Amount pursuant to 31 U.S.C. § 3730(d) is a matter that shall be handled separately by and between the Relator and the United States, without any direct involvement or input from S-Oil. In connection with this Agreement and the Civil FCA Action, Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns agrees that neither this Agreement, nor any intervention by the United States in the Civil FCA Action in order to dismiss the Civil FCA Action, nor any dismissal of the Civil FCA Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. § 3730(d)(3), bar Relator from sharing in the proceeds of this Agreement, except that the United States will not contend that Relator is barred from sharing in the proceeds of this Agreement pursuant to 31 U.S.C. § 3730(e)(4). Moreover, the United States and Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claims, and that no agreements concerning Relator share have been reached to date.

6. S-Oil waives and shall not assert any defenses S-Oil may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. S-Oil fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that S-Oil has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. Conditioned upon Relator's agreement herein, the S-Oil Released Parties fully and finally release Relator his heirs, successors, assigns, agents and attorneys (the ''Relator Released Parties''), from (a) any civil monetary claim S-Oil has or may have now or in the future against the Relator Released Parties related to the claims set forth in the Civil FCA Action, the Civil Antitrust Action, the Criminal Action, and the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733, and the Relator's investigation and prosecution thereof, including attorney's fees, costs, and expenses of every kind and however denominated, up until the date of this Agreement; and (b) all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, state, or Korean statute, law, regulation or doctrine, that the S-Oil Released Parties otherwise have brought or would have standing to bring as of the date of this Agreement, including any liability to S-Oil arising from or relating to claims the S-Oil Released Parties asserted or could have asserted related to the Civil FCA Action, up until the date of this Agreement. The S-Oil Released Parties further acknowledge and agree that these representations are a material inducement to Relator's willingness to enter into this Agreement.

9. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205–47) incurred by or on behalf of S-Oil, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement, any related plea agreement, and any related civil antitrust agreement;

(2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

(3) S-Oil's investigation, defense, and corrective actions undertaken in

response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement, any related plea agreement, and any related civil antitrust agreement;

(5) the payment S-Oil makes to the United States pursuant to this Agreement and any payments that S-Oil may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by S-Oil, and S-Oil shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, S-Oil shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by S-Oil or any of its subsidiaries or affiliates from the United States. S-Oil agrees that the United States, at a minimum, shall be entitled to recoup from S-Oil any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine S-Oil's books and records and to disagree with any calculations submitted by S-Oil or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by S-Oil, or the effect of any such Unallowable Costs on the amount of such payments.

10. S-Oil agrees to cooperate fully and truthfully with the United States in connection with the Civil FCA Action. The Civil Division of the United States Department of Justice will use reasonable best efforts, where appropriate, to coordinate any requests for cooperation in connection with the Civil FCA Action with requests for cooperation in connection with the Plea Agreement in the Criminal Action and the Civil Antitrust Action, so as to avoid unnecessary duplication and expense. S-Oil's ongoing, full, and truthful cooperation shall include, but not be limited to:

a. upon request by the United States with reasonable notice, producing at the offices of counsel for the United States in Washington, D.C. and not at the expense of the United States, complete and un-redacted copies of all non-privileged documents related to the Covered Conduct wherever located in S-Oil's possession, custody, or control, including but not limited to, reports, memoranda of interviews, and records concerning any investigation of the Covered Conduct that S-Oil has undertaken, or that has been performed by another on S-Oil's behalf;

b. upon request by the United States with reasonable notice, making current S-Oil directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Hong Kong, unless another place is mutually agreed upon;

c. upon request by the United States with reasonable notice, (i) using best efforts to assist in locating former S-Oil directors, officers, and employees identified by attorneys and/or investigative agents of the United States, and (ii) using best efforts to make any such former S-Oil directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Hong Kong, unless another place is mutually agreed upon; and

d. upon request by the United States with reasonable notice, making current S-Oil directors, officers, and employees available, and using best efforts to make former S-Oil directors, officers, employees available, to testify, consistent with the rights and privileges of such individuals, fully, truthfully, and under oath, without falsely implicating any person or withholding any information, (i) at depositions in the United States, Hong Kong, or any other mutually agreed upon place, (ii) at trial in the United States, and (iii) at any other judicial proceedings wherever located related to the Civil FCA Action.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Upon receipt of the payment of the FCA Settlement Amount described in Paragraph 1.a. above, the Court's acceptance of S-Oil's Plea Agreement in the Criminal Action, and the Court's entry of a Final Judgment in the Civil Antitrust Action, the United States and Relator shall promptly sign and file a Joint Stipulation of Dismissal, with prejudice, of the claims filed against S-Oil in the Civil FCA Action, pursuant to Rule 41(a)(1), which dismissal shall be conditioned on the Court retaining jurisdiction over Relator's claims to a relator's share and against S-Oil for recovery of attorneys' fees and costs pursuant to 31 U.S.C. §3730(d).

13. Except with respect to the recovery of Relator's attorneys' fees, expenses, and costs pursuant to 31 U.S.C. §3730(d) as provided for in Paragraph 1.b., each Party shall bear its own legal and other costs incurred in connection with this matter. The Parties agree that Relator and S-Oil will not seek to recover from the United States any costs or fees related to the preparation and performance of this Agreement.

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Ohio. S-Oil agrees that the United States District Court for the Southern District of Ohio has jurisdiction over it for purposes of this case. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties on the subject matter addressed herein. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on S-Oil's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

21. All parties consent to the United States', S-Oil's and Relator's disclosure of this Agreement, and information about this Agreement, to the public, as permitted by order of the Court. This Agreement shall not be released in un-redacted form until the Court unseals the entire Civil FCA Action.

22. This Agreement is effective on the date of signature of the last signatory to

the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____
BY: _____

Andrew A. Steinberg
Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice

DATED: _____
BY: _____

Mark T. D'Alessandro
Civil Chief

Andrew Malek
Assistant United States Attorney, U.S. Attorney's Office for the Southern District of Ohio

S-OIL CORPORATION—DEFENDANT

DATED: _____
BY: _____

Sung-Woo Park
Authorized Representative of S-Oil Corporation

DATED: _____
BY: _____

Sonia K. Pfaffenroth
William J. Baer

James W. Cooper
Wrede H. Smith III

Andy T. Wang
Arnold & Porter Kaye Scholer LLP, Counsel for S-Oil Corporation

[REDACTED]—RELATOR

DATED: _____
BY: _____

REDACTED

DATED: _____
BY: _____

Eric Havian
Constantine Cannon LLP, Counsel for Relator

United States District Court for the Southern District of Ohio Eastern Division

UNITED STATES OF AMERICA, Plaintiff, v. *HYUNDAI OILBANK CO., LTD. and S-OIL CORPORATION,* Defendants.

CASE NO. 2:19-cv-1037

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On March 20, 2019, the United States filed a civil antitrust complaint against Defendants Hyundai Oilbank Co., Ltd. (''Hyundai Oilbank'') and S-Oil Corporation (''S-Oil'') alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1. From at least March 2005 and continuing until at least October 2016 (''the Relevant Period''), Defendants and their co-conspirators conspired to fix prices and rig bids for the supply of fuel to the U.S. military for its operations in South Korea. As a result of this illegal conduct, Defendants and their co-conspirators overcharged American taxpayers by well over $100 million. Defendants have agreed to plead guilty to one count of a superseding indictment charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct; in this parallel civil action, the United States seeks compensation for the injury it incurred as a result of the conspiracy.

At the same time the Complaint was filed, the United States also filed agreed-upon proposed Final Judgments that would remedy Defendants' violation by having Hyundai Oilbank and S-Oil pay $39,100,000 and $12,980,000, respectively, to the United States. These payments resolve all civil claims of the United States against Defendants related to the conduct described in the Complaint. The United States and Defendants have stipulated that the proposed Final Judgments may be entered after compliance with the APPA. Entry of the proposed Final Judgments would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgments and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Defendants

Hyundai Oilbank is an oil company headquartered in Seosan, South Korea. Hyundai Oilbank refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. During the conspiracy, Hyundai Oilbank partnered with a logistics firm (''Company A'') to supply fuel to U.S. military installations in South Korea, with Company A acting as the prime contractor under the relevant contracts.

S-Oil is an oil company headquartered in Seoul, South Korea. S-Oil refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. Beginning in 2009, S-Oil partnered with Hanjin Transportation Co., Ltd. (''Hanjin'') to supply fuel to U.S. military installations in South Korea, with Hanjin acting as the prime contractor under the relevant contracts.

Other persons, not named as defendants in this action, participated as co-conspirators in the violation alleged in the Complaint and performed acts and made statements in furtherance thereof. These co-conspirators included, among others, GS Caltex Corporation (''GS Caltex''), Hanjin, SK Energy Co., Ltd. (''SK Energy''), and Company A.

On December 12, 2018, GS Caltex, Hanjin and SK Energy pleaded guilty to an information charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct. *See United States v. GS Caltex Corporation*, No. 2:18-cr-240 (S.D. Ohio, filed November 14, 2018); *United States v. Hanjin Transportation Co., Ltd.*, No. 2:18-cr-241 (S.D. Ohio, filed November 14, 2018); *United States v. SK Energy Company*, No. 2:18-cr-239 (S.D. Ohio, filed November 14, 2018). GS Caltex, Hanjin, and SK Energy have also settled civil claims brought by the United States in a separately filed civil action relating to the same conduct. *See United States v. GS Caltex Corp. et al.,* No. 2:18-cv-1456 (S.D. Ohio, filed November 14, 2018).

B. PC&S and AAFES Contracts

The United States military procures fuel for its installations in South Korea through competitive solicitation processes. Oil companies, either independently or with a transportation company, submitted bids in response to these solicitations.

The conduct at issue in this action relates to two types of contracts to supply fuel to the U.S. military in South Korea: Post, Camps, and Stations (''PC&S'') contracts and Army and Air Force Exchange Services (''AAFES'') contracts.

PC&S contracts are issued and administered by the Defense Logistics Agency (''DLA''), a combat support agency of the U.S. Department of Defense. The fuel procured under PC&S contracts is used to power military vehicles and heat U.S. military buildings. During the Relevant Period, DLA issued PC&S solicitations listing the fuel requirements for installations across South Korea, with each delivery location identified by a separate line item. Bidders submitted initial bids, offering a price for each line item on which they chose to bid. After DLA reviewed the initial bids, bidders were allowed to submit revised final bids. DLA reviewed the bids and awarded contracts to the bidders offering the lowest price for each line item. Payments under the PC&S contracts were wired to the awardees by a finance

and accounting agency of the U.S. Department of Defense from its office in Columbus, Ohio.

AAFES is an agency of the Department of Defense headquartered in Dallas, Texas. AAFES operates official retail stores (known as ''exchanges'') on U.S. Army and Air Force installations worldwide, which U.S. military personnel and their families use to purchase everyday goods and services, including gasoline for use in their personal vehicles. AAFES procures fuel for these stores via contracts awarded through a competitive solicitation process.

In 2008, AAFES issued a solicitation that listed the fuel requirements for installations in South Korea. Bidders submitted bids offering a price for each line item in the solicitation. Unlike DLA, AAFES awarded the entire 2008 contract to the bidder offering the lowest price across all the listed locations.

C. The Alleged Violation

The Complaint alleges that Defendants and their co-conspirators engaged in a series of meetings, telephone conversations, e-mails, and other communications to rig bids and fix prices for the supply of fuel to U.S. military installations in South Korea under several PC&S and AAFES contracts.

First, the Complaint alleges that GS Caltex, SK Energy, Hyundai Oilbank, and Company A conspired to rig bids and fix prices on the contracts issued in response to DLA solicitations SP0600-05-R-0063 and SP0600-05-R-0063-0001 (''2006 PC&S contracts''). The term of the 2006 PC&S contracts covered the supply of fuel from February 2006 through July 2009.

The Complaint alleges that between early 2005 and mid-2006, GS Caltex, SK Energy, Hyundai Oilbank, and other conspirators met multiple times and exchanged phone calls and e-mails to allocate the line items in the solicitations for the 2006 PC&S contracts. Through such communications, these conspirators agreed to inflate their bids to produce larger profit margins. For each line item allocated to a different co-conspirator, the other conspirators agreed not to bid or to bid high enough to ensure that they would not win that item. DLA awarded the 2006 PC&S line items according to the allocations made by the conspiracy.

Second, the Complaint alleges that, as part of their discussions related to the 2006 PC&S contracts, GS Caltex, Hyundai Oilbank, and other co-conspirators agreed not to compete with SK Energy in bidding for the June 2008 AAFES solicitation (''2008 AAFES contract''). The initial term of the 2008 AAFES contract ran from July 2008 to July 2010; the contract was later extended through July 2013.

Third, the Complaint alleges that Defendants and other co-conspirators conspired to rig bids and fix prices for the contracts issued in response to DLA solicitation SP0600-08-R-0233 (''2009 PC&S contracts''). Hanjin and S-Oil joined the conspiracy for the purpose of bidding on SP0600-08-R-0233. The term of the 2009 PC&S contracts covered the supply of fuel from October 2009 through August 2013.

The Complaint explains that between late 2008 and mid-2009, Defendants and other co-conspirators met multiple times and exchanged phone calls and e-mails to allocate the line items in the solicitation for the 2009 PC&S contracts. As in 2006, these conspirators agreed to bid high so as to not win line items allocated to other co-conspirators. The original conspirators agreed to allocate to Hanjin and S-Oil certain line items that had previously been allocated to the original conspirators.

Finally, the Complaint alleges that Defendants and other co-conspirators once again conspired to rig bids and fix prices for the contracts issued in response to DLA solicitation SP0600-12-R-0332 (''2013 PC&S contracts''). The term of the 2013 PC&S contracts covered the supply of fuel from August 2013 through July 2016.

The Complaint explains that Defendants and other co-conspirators communicated via phone calls and e-mails to allocate and set the price for each line item in the solicitation for the 2013 PC&S contracts. Defendants and other co-conspirators believed that they had an agreement as to their bidding strategy and pricing for the 2013 PC&S contracts. As a result of this agreement, they submitted bids with pricing above what they would have offered absent collusion.

Hanjin and S-Oil submitted bids for the 2013 PC&S contracts below the prices set by the other co-conspirators, however. Although lower than the pricing agreed upon by the conspirators, Hanjin and S-Oil still submitted bids above a competitive, non-collusive price, knowing that they would likely win the contracts because the other conspirators would bid even higher prices.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENTS

For violations of Section 1 of the Sherman Act, the United States may seek damages, 15 U.S.C. § 15a, and equitable relief, 15 U.S.C. § 4, including equitable monetary remedies. *See United States v. KeySpan Corp.*, 763 F. Supp. 2d 633, 638-641 (S.D.N.Y. 2011).

This action is related to two civil actions based on the same facts alleged in the Complaint, both filed in the United States District Court for the Southern District of Ohio: (1) *United States v. GS Caltex Corp., et al.*, No. 2:18-cv-1456, which seeks recovery from a different set of co-conspirators; and (2) a *qui tam* action currently filed under seal, alleging a violation of the False Claims Act, 31 U.S.C. § 3730.

A. Payment and Cooperation

The proposed Final Judgments require Hyundai Oilbank and S-Oil respectively to pay $39,100,000 and $12,980,000 to the United States within 10 business days of entry of the Final Judgment. These payments will satisfy all civil claims arising from the events described in Section II *supra* that the United States has against Defendants under Section 1 of the Sherman Act and under the False Claims Act. The resolution of the United States' claims under the False Claims Act is set forth in separate agreements reached between Defendants, the U.S. Attorney's Office for the Southern District of Ohio, and the U.S. Department of Justice's Civil Division. *See* Attachment 1 to each of the proposed Final Judgments.

As a result of the unlawful agreements in restraint of trade between Defendants and their co-conspirators, the United States paid more for the supply of fuel to U.S. military installations in South Korea than it would have if the companies had engaged in fair and honest competition. Defendants' payments under the proposed Final Judgments fully compensate the United States for losses it suffered and deprive Defendants of the illegitimate profits they gained as a result of the collusive bidding. In addition to the payment of damages, the proposed Final Judgments also require Defendants to cooperate with the United States regarding any ongoing civil investigation, trial, or other proceeding related to the conduct described in the Complaint. To assist with these proceedings, Defendants are required to provide all non-privileged information in their possession, make available their present employees, and use best efforts to make available their former employees, for interviews or testimony, as requested by the United States.

Under Section 4A of the Clayton Act, the United States is entitled to treble damages for injuries it has suffered as a result of violations of the Sherman Act. Under the proposed Final Judgments,

each Defendant will pay an amount that exceeds the overcharge but that reflects the value of the cooperation commitments Defendants have made as a condition of settlement and the cost savings realized by avoiding extended litigation. However, because Defendants agreed to settle and cooperate with the United States later than GS Caltex, Hanjin, and SK Energy, Defendants' payments reflect a higher multiple of the overcharge than the settlement payments made by those co-conspirators.

The proposed Final Judgments also require Hyundai Oilbank and S-Oil to appoint an Antitrust Compliance Officer and to institute an antitrust compliance program. Under the antitrust compliance program, employees and directors of Defendants with responsibility for bidding on contracts with the United States must undergo training and all employees must be informed that there will no reprisal for disclosing to the Antitrust Compliance Officer any potential violations of the United States antitrust laws. The Antitrust Compliance Officer is required annually to certify that the Defendant is in compliance with this requirement.

B. Enforcement of Final Judgments

The proposed Final Judgments contain provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph VII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgments, including its rights to seek an order of contempt from the Court. Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgments, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph VII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgments. The proposed Final Judgments were drafted to restore all competition the United States alleged was harmed by Defendants' challenged conduct. Defendants agree that they will abide by the proposed Final Judgments, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgments that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph VII(C) further provides that should the Court find in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph VII(C) provides that in any successful effort by the United States to enforce a Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section VIII of the proposed Final Judgments provide that each Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, a Final Judgment may be terminated upon notice by the United States to the Court and the Defendant that the continuation of that Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Entry of the proposed Final Judgments will neither impair nor assist the bringing of any private antitrust damages action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgments have no prima facie effect in any subsequent lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENTS

The United States and Defendants have stipulated that the proposed Final Judgments may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgments are in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgments within which any person may submit to the United States written comments regarding a proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to a proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet website and, in certain circumstances, published in the Federal Register.

Written comments should be submitted by mail to:

Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 5th Street, NW, Suite 8000, Washington, DC 20530.

The proposed Final Judgments provide that the Court retains jurisdiction over this action, and the parties may apply to the Court for any necessary or appropriate modification, interpretation, or enforcement of a Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENTS

The United States considered, as an alternative to the proposed Final Judgments, a full trial on the merits against Defendants. The United States is satisfied, however, that the relief in the proposed Final Judgments remedies the violation of the Sherman Act alleged in the Complaint. The proposed Final Judgments represent substantial monetary relief while avoiding the time, expense, and uncertainty of a full trial on the merits. Further, Defendants' agreements to cooperate with the civil investigation and any potential litigation will enhance the ability of the United States to obtain relief from the remaining conspirators.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENTS

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in

accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. Hillsdale Cmty. Health Ctr.*, 2015 U.S. Dist. LEXIS 162505, at *3 (E.D. Mich. 2015) (explaining that the ''Court's review is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62; *United States v. Medical Mut. of Ohio*, 1998 U.S. Dist. LEXIS 21508, at *2-3 (N.D. Ohio 1998). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 74 (D.D.C. 2014) (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *United States v. Dairy Farmers of Am., Inc.*, 2007 U.S. Dist. LEXIS 33230, at *3 (E.D. Ky. 2007) (citing *United States v. Microsoft*, 231 F. Supp. 2d 144, 152 (D.D.C. 2002)) (noting that a court ''must accord deference to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60; *see also Dairy Farmers*, 2007 U.S. Dist. LEXIS 33230 at *3 (citing *Microsoft* favorably).

In its 2004 amendments,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language

[1] *See also BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. *See also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgments.

Dated: March 20, 2019

Respectfully submitted,

Benjamin C. Glassman
United States Attorney

/s/ Andrew M. Malek
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/s/ J. Richard Doidge
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BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0073]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Furnishing of Samples

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-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: The proposed information collection was previously published in the **Federal Register**, on February 5, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until April 26, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact: Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, either by mail 99 New York Ave NE, Washington, DC 20226, or by email at *eipb-informationcollection@atf.gov* or by telephone at 202–648–7158. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

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: Business or other for-profit.

Other: None.

Abstract: Pursuant to 18 U.S.C. Chapter 40 § 843 (i) (1), ATF requires licensed manufacturers and importers and persons who manufacture or import explosives materials or ammonium nitrate to submit samples at the request of the Director. This collection of information is contained in 27 CFR 555.110.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 100 respondents will utilize this information collection, and it will take each respondent approximately 30 minutes to provide their response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 50 hours, which is equal to 100 (# of respondents) * 1 (# of responses per respondents) *.5 (30 minutes).

(7) An Explanation of the Change in Estimates: The adjustments associated with this collection from the previous renewal include a reduction in the total respondents and burden hours by 2,250 and 1,125 hours respectively, since the previous renewal in 2016.

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 22, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–05829 Filed 3–26–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0043]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change of a Currently Approved Collection; National Tracing Center Trace Request/Solicitud de Rastreo del Centro Nacional de Rastreo—ATF Form 3312.1/3312.1 (S)

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: Neil Troppman, ATF National Tracing Center, Law Enforcement Support Branch, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *neil.troppman@atf.gov,* or by telephone at 304–260–3643.

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, with change, of a currently approved collection.

2. *The Title of the Form/Collection:* National Tracing Center Trace Request/Solicitud de Rastreo del Centro Nacional de Rastreo.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3312.1/3312.1 (S).

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: Federal Government.

Other (if applicable): State, Local, or Tribal Government.

Abstract: ATF Form 3312.1/3312.1 (S) is used by Federal, State, local and certain foreign law enforcement officials to request that ATF trace firearms used or suspected to have been used in crimes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 6,103 respondents will utilize this form approximately 56.4439 times, and it will take each respondent approximately 6 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 34,448 hours, which is equal to 6,103 (# of respondents) * 56.4439 (# of responses per respondents) * .1 (6 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.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–05785 Filed 3–26–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before May 28, 2019.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, *ebsa.opr@dol.gov,* (202) 693–8410, FAX (202) 219–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The

Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Access to Multiemployer Plan Information.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0131.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 2,720.

Responses: 242,000.

Estimated Total Burden Hours: 31,000.

Estimated Total Burden Cost (Operating and Maintenance): $537,000.

Description: Section 101(k) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Pension Protection Act of 2006 (PPA) requires the administrator of a multiemployer plan to provide copies of certain actuarial and financial documents about the plan to participants, beneficiaries, employee representatives and contributing employers upon request. The rule affects plan administrators, participants and beneficiaries and contributing employers of multiemployer plans. The Department previously submitted an ICR to OMB for approval of this information collection and received OMB approval under OMB Control No. 1210–0131. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0039.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 2,981,000.

Responses: 108,466,000.

Estimated Total Burden Hours: 279,000.

Estimated Total Burden Cost (Operating and Maintenance): $172,736,000.

Description: Section 104(b) of ERISA requires the administrator of an employee benefit plan to furnish plan participants and certain beneficiaries with a Summary Plan Description (SPD) that describes, in language understandable to an average plan participant, the benefits, rights, and obligations of participants in the plan. The information required to be contained in the SPD is set forth in section 102(b) of ERISA. To the extent there is a material modification in the terms of the plan or a change in the required content of the SPD, section 104(b)(1) of ERISA requires the plan administrator to furnish participants and specified beneficiaries with a summary of material modifications (SMM) or summary of material reductions (SMR). The Department has issued regulations providing guidance on compliance with the requirements to furnish SPDs, SMMs, and SMRs. These regulations, which are codified at 29 CFR 2520.102–2, 102–3, and 29 CFR 104b–2 and 104b–3, contain information collections for which the Department has obtained OMB approval under OMB Control No. 1210–0039. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption 2006–16.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0065.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 100.

Responses: 1,000.

Estimated Total Burden Hours: 192.

Estimated Total Burden Cost (Operating and Maintenance): $7,200.

Description: This ICR covers information collections contained in PTE 2006–16. In 1981 and 1982, the Department issued two related prohibited transaction class exemptions, PTE 81–6 and PTE 82–63, that permit employee benefit plans to lend securities owned by the plans as investments to banks and broker-dealers and to make compensation arrangements for lending services provided by a plan fiduciary in connection with securities loans. In 2006, the Department promulgated PTE 2006–16, which combines and amends the exemptions previously provided under PTE 81–6 and PTE 82–63. The new exemption expands the categories of exempted transactions to include securities lending to foreign banks and broker-dealers that are domiciled in specified countries and to allow the use of additional forms of collateral, all subject to specified conditions.

Among other conditions, the class exemption requires a bank or broker-dealer that borrows securities from a plan to provide the plan with its most recent audited financial statement. The borrower must also affirm, when the loan is negotiated, that there has been no material adverse change in its financial condition since the previously audited statement.

The exemption also requires the agreements regarding the securities loan transaction or transactions and the compensation arrangement for the lending fiduciary to be contained in written documents. Individual agreements are not required for each transaction; rather the compensation agreement may be made in the form of a master agreement covering a series of transactions. The ICRs contained in PTE 2006–16 were approved by OMB under OMB Control No. 1210–0065. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0125.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 4.

Responses: 4.

Estimated Total Burden Hours: 4.

Estimated Total Burden Cost (Operating and Maintenance): $270.

Description: Section 3(38)(B) of ERISA imposes certain registration requirements on an investment adviser that wishes to be considered an investment manager under ERISA. In 1997, section 3(38) was amended to permit advisers to satisfy the registration requirements by registering electronically with the Investment Adviser Registration Depository (IARD) established and maintained by the Securities Exchange Commission (SEC). The Department promulgated a final regulation to implement the statutory change. The final regulation is codified at 29 CFR 2510.3–38. EBSA submitted an ICR requesting OMB approval of the information collection contained in 29 CFR 2510.3–38, and OMB approved the information collection under OMB control number 1210–0125. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 88–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0095.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 50.

Responses: 11,000.

Estimated Total Burden Hours: 900.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 88–59 provides an exemption from certain prohibited transaction provisions of ERISA and from certain taxes imposed by the Internal Revenue Code of 1986 (Code) for transactions in which an employee benefit plan provides mortgage financing to purchasers of residential dwelling units, provided specified conditions are met. Among other conditions, PTE 88–59 requires that adequate records pertaining to exempted transactions be maintained for the duration of the pertinent loan. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0095. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: National Medical Support Notice—Part B.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0113.

Affected Public: Businesses or other for-profit.

Respondents: 370,000.

Responses: 8,700,000.

Estimated Total Burden Hours: 727,000.

Estimated Total Burden Cost (Operating and Maintenance): $4,700,000.

Description: Section 609(a) of ERISA, requires each group health plan, as defined in ERISA section 607(1), to provide benefits in accordance with the applicable requirements of any ''qualified medical child support order'' (QMCSO). A QMCSO is, generally, an order issued by a state court or other competent state authority that requires a group health plan to provide group health coverage to a child or children of an employee eligible for coverage under the plan. In accordance with Congressional directives contained in the Child Support Performance and Incentive Act of 1998 (CSPIA), EBSA and the Federal Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS) cooperated in the development of regulations to create a National Medical Support Notice (NMSN or Notice). The Notice simplifies the issuance and processing of qualified medical child support orders issued by state child support enforcement agencies, provides for standardized communication between state agencies, employers, and plan administrators, and creates a uniform and streamlined process for enforcement of medical child support obligations ordered by state child support enforcement agencies. The NMSN comprises two parts: Part A was promulgated by HHS and pertains to state child support enforcement agencies and employers; Part B was promulgated by the Department and pertains to plan administrators pursuant to ERISA. This solicitation of public comment relates only to Part B of the NMSN, which was promulgated by the Department. In connection with promulgation of Part B of the NMSN, the Department submitted an ICR to OMB for review, and OMB approved the information collections contained in Part B under OMB control number 1210–0113. The current approval is scheduled to expire on August 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 80–83—Sale of Securities To Reduce Indebtedness of Party in Interest.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0064.

Affected Public: Businesses or other for-profits.

Respondents: 25.

Responses: 25.

Estimated Total Burden Hours: 15.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 80–83 provides an exemption from certain prohibited transaction provisions of ERISA and from certain taxes imposed by the Code for transactions in which an employee benefit plan purchases securities when the proceeds from such purchase may be used to reduce or retire a debt owed by a party in interest with respect to such plan, provided that specified conditions are met. Among other conditions, PTE 80–83 requires that adequate records pertaining to an exempted transaction be maintained for six years. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0064. The current approval is scheduled to expire on November 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Statutory Exemption for Cross-Trading of Securities.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0130.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 319.

Responses: 2,870.

Estimated Total Burden Hours: 3,333.

Estimated Total Burden Cost (Operating and Maintenance): $14,000.

Description: The Interim Final Rule on Statutory Exemption for Cross-Trading of Securities implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of ERISA, as added by section 611(g) of the PPA. Section 611(g)(1) of the PPA created a new statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA those cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied. Section 611(g)(3) of the PPA further directed the Secretary to issue regulations, within 180 days after enactment, regarding the content of the policies and procedures to be adopted by an investment manager to satisfy the conditions of the new statutory exemption.

The Department issued a final cross-trading regulation on October 7, 2008. The recordkeeping requirement in the regulation constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0130. The current approval is scheduled to expire on November 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Plan Asset Transactions Determined by In-House Asset Managers under Prohibited Transaction Class Exemption 96–23.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0145.

Affected Public: Businesses or other for-profits.

Respondents: 20.

Responses: 20.

Estimated Total Burden Hours: 940.

Estimated Total Burden Cost (Operating and Maintenance): $400,000.

Description: PTE 96–23, a class exemption, permits various transactions involving employee benefit plans whose assets are managed by in-house asset

managers (INHAMs), provided the conditions of the exemption are met. The Department submitted the ICR included in the Proposed Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers to OMB for review and clearance at the time the Notice of the proposed exemption was published in the **Federal Register** (June 14, 2010, 75 FR 33642). OMB approved the amendment under OMB control number 1210–0145. The current approval will expire on November 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Petition for Finding Under Employee Retirement Income Security Act Section 3(40).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0119.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 41,386.

Responses: 10.

Estimated Total Burden Hours: 50.

Estimated Total Burden Cost (Operating and Maintenance): $41,000.

Description: Rules codified beginning at 29 CFR 2570.150 set forth an administrative procedure (''procedural rules'') for obtaining a determination by the Department as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These procedural rules concern specific criteria set forth in 29 CFR 2510.3–40 (''criteria rules''), which, if met, constitute a finding by the Department that a plan is collectively bargained. Plans that meet the requirements of the criteria rules are not subject to state law. Among other requirements, the procedural rules require submission of a petition and affidavits by parties seeking a finding. The Department has obtained approval from OMB, under OMB Control No. 1210–0119, for the information collections contained in its rules for a finding under section 3(40). The current approval is scheduled to expire on November 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers under Prohibited Transaction Exemption 84–14.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0128.

Affected Public: Businesses or other for-profits.

Respondents: 721,000.

Responses: 4,620.

Estimated Total Burden Hours: 111,000.

Estimated Total Burden Cost (Operating and Maintenance): $46,200,000.

Description: PTE 84–14, a class exemption that permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by ''qualified professional asset managers'' (QPAMs) that are independent of the parties in interest and which meet specified financial standards. The exemption provides additional exemptive relief for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief also is provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund. QPAMs are permitted to manage an investment fund containing the assets of the QPAM's own plan or an affiliate's plan. The Department has obtained approval for the information collections from OMB under OMB Control No. 1210–0128. The current approval is scheduled to expire on December 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (PTE 77–4).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0049.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 873.

Responses: 271,238.

Estimated Total Burden Hours: 23,040.

Estimated Total Burden Cost (Operating and Maintenance): $117,069.

Description: Prohibited Transaction Exemption (PTE) 77–4 provides relief from the restrictions of section 406 of ERISA and from the sanctions resulting from the application of section 4975 of the Code, for an employee benefit plan's purchase or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 (mutual fund) when an investment advisor for the mutual fund or its affiliate is: (1) A plan fiduciary; and (2) not an employer of employees covered by the plan.

Section II(d) of PTE 77–4 contains certain conditions for the exemptive relief and provides, in pertinent part, that: A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

Delivery of a ''summary prospectus'' may be used to satisfy the condition in section II(d) of PTE 77–4 requiring the delivery of a mutual fund's prospectus to the second fiduciary if the summary prospectus meets the requirements of the Securities and Exchange Commission's (SEC) revised disclosure provisions for mutual funds including a summary prospectus rule that were published in 2009. Pursuant to the SEC's revised disclosure provisions, mutual funds also are required to send the full prospectus to the investor upon an investor's request and to provide the full prospectus on-line at a specified internet site. The Department previously submitted an ICR to OMB for approval of the information collections in PTE 77–4 and received OMB approval under OMB Control No. 1210–0049. The current approval is scheduled to expire on December 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice Requirements of the Health Care Continuation Coverage Provisions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0123.

Affected Public: Businesses or other for-profits.

Respondents: 605,869.

Responses: 16,052,495.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $30,490,898.

*Description:*The continuation coverage provisions of section 601 through 608 of ERISA (and parallel

provisions of the Code) generally require group health plans to offer qualified beneficiaries the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage. The ICR contained in these rules was approved by OMB under OMB Control No. 1210–0123. The current approval is scheduled to expire on December 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Model Employer Children's Health Insurance Program Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0137.

Affected Public: Businesses or other for-profits, Farms, Not-for-profit institutions.

Respondents: 5,897,699.

Responses: 175,973,641.

Estimated Total Burden Hours: 706,828.

Estimated Total Burden Cost (Operating and Maintenance): $16,963,859.

Description: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111–3) was signed into law on February 4, 2009. Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents. ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement. This ICR relates to the Model Employer CHIP Notice, which was approved by OMB under OMB Control No. 1210–0137. The current approval is scheduled to expire on December 31, 2019.

Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2019–05818 Filed 3–26–19; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–007)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially exclusive patent license in the United States to practice the invention(s) described and claimed in U.S. Patent Application No. 15/014,608 entitled ''Nuclear Thermionic Avalanche Cells with Thermoelectric (NTAC–TE) Generator in Tandem Mode,'' NASA Case Number LAR–17981–1; U.S. Patent Application No. 15/995,467 entitled ''Portable Compact Thermionic Power Cell,'' NASA Case Number LAR–18860–1; U.S. Patent Application No. 15/479,679 entitled ''Metallic Junction Thermoelectric Generator,'' NASA Case Number LAR–18866–1; U.S. Patent Application No. 62/621,930 titled ''Selective and Direct Deposition Technique for Streamlined CMOS Processing,'' NASA Case Number LAR–18925–P2; U.S. Patent Application No. 62/643,292 entitled ''Portable Miniaturized Thermionic Power Cell with Multiple Regenerative Layers,'' NASA Case No. LAR–18926–P; U.S. Patent Application No. 62/643,303 entitled ''High Performance Electric Generators Boosted by Nuclear Electron Avalanche (NEA),'' NASA Case No. LAR–19112–P; U.S. Patent Application No. 62/642,198 entitled ''Co-60 Breeding Reactor Tandem with Thermionic Avalanche Cell,'' NASA Case No. LAR–18762–P; U.S. Patent Application No. 62/678,006 entitled ''Multi-Layered Radio-Isotope for Enhanced Photoelectron Avalanche Process,'' NASA Case No. LAR–19420–P to BlackRock Energy Corporation, having its principal place of business in Williamsburg, VA. The fields of use may be limited to mobile and/or transportable, as opposed to stationary (where stationary means permanently fixed and not capable of being moved), power/energy sources for United States Department of Defense (specifically the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as any future created Space Corps) applications, including but not limited to powering mobile and/or transportable high energy weaponry, including the weaponry's mode of transport (including but not limited to tanks, surface vessels, trucks, aircraft, Unmanned Underwater Vehicles (UUVs), Autonomous Underwater Vehicles (AUVs), and drones), high energy weapon platforms, and portable power stations for use at Forward Operating Bases (where Forward Operating Bases means airfields used to support tactical operations without establishing full support facilities). The licensed

exclusive fields of use may exclude all other fields, including but not limited to any outer space applications intended for use beyond 400,000 feet above Earth's mean sea level. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective partially exclusive license may be granted unless NASA receives written objections, including evidence and argument no later than April 11, 2019 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dohl Act and implementing regulations. Competing applications completed and received by NASA no later than April 11, 2019 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, Virginia 23681. Phone (757) 864–3221. Facsimile (757) 864–9190.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Riley, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, Virginia 23681. Phone (757) 864–3221. Facsimile (757) 864–9190.

SUPPLEMENTARY INFORMATION: This notice of intent to grant a partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these invention(s) have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2019–05778 Filed 3–26–19; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278; NRC–2018–0266]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station; Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Exelon Generation Company, LLC to withdraw its application dated September 27, 2018, for proposed amendments to Renewed Facility Operating License Nos. DPR–44 and DPR–56. The proposed amendments would have modified Technical Specification (TS) 3.3.6.2, ''Secondary Containment Isolation Instrumentation.''

DATES: March 27, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0266 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0266. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ''Peach Bottom, Units 2 and 3, License Amendment Request—Technical Specifications Section 3.3.6.2 Functions 3 and 4 Applicability Changes Pertaining to Reactor Building and Refueling Floor Ventilation,'' is available in ADAMS under Accession No. ML18271A009.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Tobin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2328; email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its September 27, 2018, application (ADAMS Accession No. ML18271A009) for proposed amendments to Renewed Facility Operating License Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, respectively, located in York County, Pennsylvania.

The proposed amendments would have authorized revisions to TS 3.3.6.2, ''Secondary Containment Isolation Instrumentation,'' to modify the applicability of Functions 3 and 4. Specifically, Function 3 (reactor building ventilation exhaust radiation—high) would have been revised to only be required when Function 4 (refueling floor ventilation exhaust radiation—high) was not maintained. Function 4 would have been revised to only be required when Function 3 was not maintained. Further, this change would have clarified which standby gas treatment subsystems were required to be put into operation or declared inoperable as described in TS 3.3.6.2, Condition C, for Required Actions C.2.1 and C.2.2.

On November 20, 2018, a **Federal Register** notice was published (83 FR 58612) indicating a finding of no significant impact for the proposed license amendment. On March 11, 2019 (ADAMS Accession No. ML19071A062), the licensee sent a letter requesting withdrawal of the license amendment application.

Dated at Rockville, Maryland, this 21st day of March, 2019.

For the Nuclear Regulatory Commission.

Jennifer C. Tobin,

Project Manager, Plant Licensing Branch LPL–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–05804 Filed 3–26–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–18 and 50–183; NRC–2019–0082]

GE Hitachi Nuclear Energy; Vallecitos Nuclear Center Partial Site Release

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial site release; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a request from GE Hitachi Nuclear Energy (GEH) to approve the release for unrestricted use of a portion of its property under the control of the NRC power reactor licenses for the Vallecitos Nuclear Center (VNC) in Sunol, California. Approval of the request would allow GEH to make available to the Alameda County Transportation Commission an approximately seven-acre portion on the southern boundary of the GEH-controlled property to support road development and widening of California State Highway 84. The NRC is soliciting public comment on the requested action and invites interested persons to participate. The NRC plans to hold a public meeting to promote full understanding of the requested actions and to facilitate public comment.

DATES: Submit comments by April 26, 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. A public meeting will be held on March 28, 2019.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0082. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* 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: Jack Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0082. 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–2019–0082.
- *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 requesting document, entitled ''GE-Hitachi Nuclear Energy—Unconditional Release of Route 84 Frontage Section of Vallecitos Nuclear Center (VNC) Site,'' is available in ADAMS under accession no. ML18348A425.
- *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–2019–0082. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The NRC received a request for approval of the partial site releases from GE Hitachi Nuclear Entergy (GEH or licensee), by letter dated December 14, 2018 (ADAMS Accession No. ML18348A425). The request seeks approval for release for unrestricted use of a non-impacted portion of the VNC site acreage located at 6705 Vallecitos Rd., Sunol, California. The proposed release area is an approximately seven-acre portion on the south side of the licensee-controlled facility property.

The GEH licenses (NRC License No. DPR–1, Docket No. 50–18, and License No. DR–10, Docket No. 50–183) are for power reactors licensed under part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of title 10 of the *Code of Federal Regulations* (10 CFR). The two facilities are certified as permanently shut down with licenses allowing only the possession of nuclear material (not operation of the reactors). Both reactors are currently in ''SAFSTOR'' decommissioning mode awaiting the termination of their power reactor licenses.

The licensee requests this partial site release for unrestricted use under 10 CFR 50.83, ''Release of part of a power reactor facility or site for unrestricted use.'' The licensee has declared this portion of the site to be ''non-impacted'' as defined in 10 CFR 50.2, ''Definitions.'' Approval of the request would allow GEH to make the released portion of the property available to the Alameda County Transportation Commission to support road development and widening of California State Highway 84.

As described in 10 CFR 50.83(c), the NRC will determine whether the licensee has adequately evaluated the effect of releasing the properties per the requirements of 10 CFR 50.83(a)(1); determine whether the licensee's classification of any released area as ''non-impacted'' is adequately justified; and if the NRC determines that the licensee's submittal is adequate, inform the licensee in writing that the release is approved.

III. Public Meeting

The NRC will conduct a public meeting to discuss GEH's request for approval of the partial site release. The meeting will be held on Thursday, March 28, 2019, from 7:00 p.m. until 8:30 p.m., Pacific Daylight Time, at the Aloft Hotel Dublin-Pleasanton, 4075 Grafton Street, Dublin, California.

This is a Category 3 public meeting where stakeholders are invited to fully engage NRC staff to provide a range of views, information, concerns and suggestions with regard to regulatory issues related to GEH's request. After the licensee and NRC staff presentations, the public can ask questions and give feedback. Comments

can be provided orally or in writing to the NRC staff present at the meeting.

Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/pmns/mtg.* The agenda will be posted no later than 10 days prior to the meeting.

Dated at Rockville, Maryland, this 21st day of March 2019.

For the Nuclear Regulatory Commission.

Stephen S. Koenick,

Acting Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–05802 Filed 3–26–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a re-established matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the re-establishment of a matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA) (Computer Matching Agreement 1071).

DATES: Please submit comments on or before April 26, 2019. The matching program will begin on April 26, 2019 unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months if the respective agency Data Integrity Boards determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: You may submit comments via mail to: Deon Mason, Chief, Business Services, Resource Management, Retirement Services, Office of Personnel Management, Room 3316–G, 1900 E Street NW, Washington, DC 20415, or via email at *Deon.Mason@opm.gov.* You may also submit comments, identified by docket number and title, at the Federal Rulemaking Portal: *http://www.regulations.gov* by following the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Bernard A. Wells III, Retirement Services, Office of Personnel Management, at (202) 606–2730.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, including OMB Final Guidance Interpreting the Provisions of Public Law 100–53 (published in the **Federal Register** on June 19, 1989 (54 FR 25818) and OMB Circular A–108, notice is hereby given of the re-establishment of a matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA). This matching program, Computer Matching Agreement 1071, is being re-established to enable OPM to offset specific benefits paid to disability annuitants, child survivor annuitants, and spousal survivor annuitants by a percentage of benefits payable by SSA under Title II of the Social Security Act, as required by law.

Participating Agencies: OPM and SSA

Authority for Conducting the Matching Program: OPM's authority to participate in this matching program derives from 5 U.S.C. 8442(f), 8443(a), 8452(a)(2)(A), and 8461(h)(1). SSA is authorized to participate in this matching program pursuant to 42 U.S.C. 1306.

Purpose(s): The purpose of this matching program between OPM and SSA is to assist OPM in meeting its legal obligation to offset specific benefits payable by OPM to disability annuitants, child survivor annuitants, and spousal survivor annuitants. SSA will disclose to OPM benefit information regarding individuals who receive benefits from SSA under Title II of the Social Security Act, which OPM will use to determine an individual's eligibility to receive benefits from OPM and to compute the benefits it provides at the correct rate.

Categories of Individuals: The individuals about whom OPM maintains information that are involved in this matching program include retired Federal employees who are eligible or potentially eligible to receive a disability annuity from OPM (disability annuitants), and surviving children and surviving spouses of those disability annuitants who are themselves eligible or potentially eligible to receive an annuity from OPM. The individuals about whom SSA maintains information that is involved in this matching program include those who receive benefits from SSA under Title II of the Social Security Act.

Category of Records: The categories of records involved in the data match from OPM include information about those individuals who have applied for or are eligible or potentially eligible for disability annuitant benefits. Specifically, full name, Social Security number (SSN), date of birth, and a system indicator required to extract information from SSA's systems. For those individuals for whom SSA has a record, SSA will provide OPM with information about an individual's beneficiary status and any associated benefit information; for those individuals for whom SSA cannot match the SSN, SSA will return an appropriate code to OPM.

System(s) of Records: OPM's system of records involved in this matching program is designated OPM/Central-1, Civil Service Retirement and Insurance Records. 64 FR 54930 (Oct. 8, 1999), as amended at 73 FR 15013 (March 20, 2008). SSA's systems of records involved in this matching program are the Master Files of Social Security Number Holders and SSN Applications, 60–0058, 75 FR 82121 (Dec. 29, 2010) as amended at 78 FR 40542 (July 5, 2013) and 79 FR 8780 (Feb. 13, 2014); and the Master Beneficiary Record (MBR), 60–0090, 71 FR 1826 (Jan. 11, 2006), as amended at 72 FR 69723 (Dec. 10, 2007) and 78 FR 40542 (July 5, 2013).

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–05797 Filed 3–26–19; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–110; MC2019–102 and CP2019–111; MC2019–103 and CP2019–112]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES:

Comments are due: March 29, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–110; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Plus 4 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* March 21, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* March 29, 2019.

2. *Docket No(s).:* MC2019–102 and CP2019–111; *Filing Title:* USPS Request to Add Parcel Select and Parcel Return Service Contract 9 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 21, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* March 29, 2019.

3. *Docket No(s).:* MC2019–103 and CP2019–112; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 55 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 21, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* March 29, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–05825 Filed 3–26–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Parcel Select and Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 21, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select and Parcel Return Service Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–102, CP2019–111.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–05795 Filed 3–26–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 21, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 55 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2019–103, CP2019–112.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–05794 Filed 3–26–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85385; File No. SR–NYSEArca–2018–83]

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, Regarding Changes to Investments of the iShares Bloomberg Roll Select Commodity Strategy ETF

March 21, 2019.

I. Introduction

On December 19, 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 regarding changes to investments of the iShares Bloomberg Roll Select Commodity Strategy ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E . The proposed rule change was published for comment in the **Federal Register** on December 31, 2018.[3] On February 13, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to 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 certain changes regarding investments of the Fund, Shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares on the Exchange. Shares of the Fund commenced listing and trading on the Exchange on April 5, 2018 under the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600–E.

The Shares are offered by iShares U.S. ETF Trust (''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'') is the investment adviser for the Fund.[11] BlackRock Investments, LLC is the distributor for the Fund's Shares. State Street Bank and Trust Company serves as the administrator, custodian and transfer agent for the Fund.

A. Fund Investments

According to the Exchange, the Fund's investment objective is to seek to provide exposure, on a total return basis, to a diversified group of commodities. 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 Bloomberg Roll Select Commodity Index (''Reference Benchmark'').[14] In connection with investments in swaps on the Reference Benchmark, the Fund is expected to establish new swaps contracts on an ongoing basis and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84931 (December 21, 2018), 83 FR 67741.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85117, 84 FR 5124 (February 20, 2019). The Commission designated March 31, 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-2018-83/srnysearca201883-5031694-183050.pdf.*

[7] In Amendment No. 2, the Exchange: (1) Clarified that Shares of the Fund commenced listing and trading on the Exchange on April 5, 2018 under the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600–E; (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 (as defined below); (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) represented that the Fund's investments currently comply with the generic requirements set forth in Commentary .01 to NYSE Arca Rule 8.600–E; (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; and (9) made technical and conforming changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2018-83/srnysearca201883-5152678-183414.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.

[10] According to the Exchange, on February 21, 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] The Bloomberg Roll Select Commodity Index is a version of the Bloomberg Commodity Index that aims to mitigate the effects of contango on index performance (as described further below). For each commodity, the index rolls into the futures contract showing the most backwardation or least contango, selecting from those contracts with nine months or fewer until expiration. (Source: Bloomberg)

replace expiring contracts.[15] Swaps subsequently entered into by the Fund may have terms that differ from the swaps the Fund previously held.[16] 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,[17] and fixed income securities other than cash equivalents, as described below.

The Reference Benchmark is composed of 22 futures contracts across 20 physical agricultural, livestock, energy, precious metals and industrial metals commodities. The Reference Benchmark reflects the returns from these commodities and provides broad-based exposure to commodities as an asset class by using liquidity and sector caps to avoid overconcentration in any single commodity or commodity sector. The Reference Benchmark employs a contract roll strategy intended to minimize the effects of contango and maximize the effects of backwardation.[18]

The Fund will invest in financial instruments described below that provide exposure to commodities and not in the physical commodities themselves.

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, financial rates, U.S. Treasuries, or a basket or index of any of the foregoing (collectively, ''Listed Derivatives'').[19] Listed Derivatives will comply with the criteria in Commentary .01(d) of NYSE Arca Rule 8.600–E.

The Fund (through its Subsidiary) 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 Rule 8.600–E, but excluding Short-Term Fixed Income Securities), interest rates, financial rates, or a basket or index of any of the foregoing (collectively, ''OTC Derivatives,'' [20] and together with Listed Derivatives, ''Commodity Investments'').[21]

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.[22] 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.[23]

The Fund also may invest in fixed income securities as defined in Commentary .01(b) to NYSE Arca Rule 8.600–E,[24] other than cash equivalents and Short-Term Fixed Income Securities, with remaining maturities longer than 397 days (''Fixed Income Securities''). Such Fixed Income Securities will comply with the requirements of Commentary .01(b) to NYSE Arca Rule 8.600–E.[25]

The Fund may also hold exchange-traded notes (''ETNs'') [26] and exchange-traded funds (''ETFs'').[27]

[15] Swaps on the Reference Benchmark are included in ''Commodity Investments'' as defined below.

[16] 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.

[17] Cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[18] 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 Reference Benchmark 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.

[19] 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.

[20] Examples of OTC Derivatives the Fund may invest in include swaps on commodity futures contracts similar to those found in the Reference Benchmark and options that correlate to the investment returns of commodities without investing directly in physical commodities.

[21] 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.

[22] As discussed below under ''Application of Generic Listing Requirements,'' the Fund's 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.

[23] 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).

[24] 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.

[25] Among the Fixed Income Securities in which the Fund may invest are commodity-linked notes.

[26] 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).

[27] The term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as

Continued

The Fund's exposure to Commodity Investments is obtained by investing through a wholly-owned subsidiary organized in the Cayman Islands (''Subsidiary'').[28] 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.

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 proposed 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 the Fund's portfolio will meet all such requirements except for those set forth in Commentary .01 (b)(1)–(4) (with respect to Short-Term Fixed Income Securities) and .01(e) (with respect to OTC Derivatives), as described below.

According to the Exchange, the Fund's investments currently comply with the generic requirements set forth in Commentary .01 to NYSE Arca Rule 8.600–E. The Exchange proposes that, going forward, 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.[29] The Exchange states 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,[30] 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) 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).

According to the Exchange, the Fund's portfolio with respect to OTC Derivatives currently complies with the requirements set forth in Commentary

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.

[28] The Exchange represents that all statements related to the Fund's investments and restrictions are applicable to the Fund and Subsidiary collectively.

[29] 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) 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.

[30] *See supra* note 17.

.01(e) to NYSE Arca Rule 8.600–E.[31] The Exchange proposes that, going forward, the Fund's holdings in OTC Derivatives will not comply with the requirements set forth in Commentary .01(e). 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.[32] 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 futures 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 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.[33] 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–2018–83, 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 Act[34] 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,[35] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.''[36]

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,[37] any request for an opportunity to make an oral presentation.[38]

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 17, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 1, 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,[39] 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 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

[31] 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).

[32] As an example, the Exchange states that the Reference Benchmark is composed of 22 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.

[33] 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).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] *Id.*

[36] 15 U.S.C. 78f(b)(5).

[37] 17 CFR 240.19b–4.

[38] 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).

[39] *See supra* note 7.

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.'' [40] 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–2018–83 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–2018–83. 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–2018–83 and should be submitted by April 17, 2019. Rebuttal comments should be submitted by May 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Eduardo A. Aleman,

Deputy Secretary.

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[40] 15 U.S.C. 78f(b)(5).

[41] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85390; File No. SR–NYSE–2019–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Permit Affiliated Member Organizations That Are Supplemental Liquidity Providers on the Exchange To Obtain the Most Favorable Rate in Securities Traded Pursuant to Unlisted Trading Privileges

March 21, 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 19, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) permit affiliated member organizations that are Supplemental Liquidity Providers (''SLPs'') on the Exchange to obtain the most favorable rate in securities traded pursuant to Unlisted Trading Privileges (''UTP'') (Tapes B and C) when (a) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (b) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates; (2) modify the quoting requirements for SLP tiered rates for displayed and non-displayed orders in UTP securities; and (3) clarify that the combined SLP quoting requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization. The Exchange proposes to implement these changes to its Price List effective March 19, 2019.[4] 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate in UTP securities when (a) at least one affiliate satisfies the

[4] The Exchange originally filed to amend the Price List on February 28, 2019 (SR–NYSE–2019–10). On March 11, 2019, SR–NYSE–2019–10 was withdrawn and replaced by SR–NYSE–2019–12. SR–NYSE–2019–12 was subsequently withdrawn and replaced by this filing.

quoting requirements for SLPs in assigned securities, and (b) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates; (2) modify the quoting requirements for SLP tiered rates for displayed and non-displayed orders in UTP securities; and (3) clarify that the combined SLP quoting requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization.

The Exchange proposes to implement these changes to its Price List effective March 19, 2019

Proposed Rule Change

Background

SLPs in UTP securities are eligible for certain credits and fees for displayed and non-displayed orders that add liquidity to the Exchange in UTP Securities priced at or above $1.00. The amount of the credit is currently determined by the ''tier'' for which the SLP qualifies, which is based on the SLP's level of quoting and ADV of liquidity added by the SLP in assigned UTP securities.

Currently, for displayed orders in UTP Securities that add liquidity to the Exchange, the Exchange offers a non-tiered credit of $0.0026 per share per tape in an assigned UTP Security where the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B.[5] For non-displayed orders in UTP Securities that add liquidity to the Exchange, the Exchange offers a non-tiered credit of $0.0008 per share per tape in an assigned UTP Security if the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B.

Current Tier 2 provides a $0.0029 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.03% per tape, and quotes on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement in 200 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (2) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B. Tier 2 also provides a $0.0011 per share credit per tape in assigned UTP securities for SLPs adding non-displayed liquidity to the Exchange if the SLP meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

Current Tier 1 provides a $0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% for Tape B and 0.075% for Tape C, and (2) quotes on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement in 400 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B. Tier 1 also provides a $0.0014 per share credit per tape for SLPs adding non-displayed liquidity to the Exchange, and a $0.0025 per share credit for MPL Orders adding liquidity, in an assigned UTP Security if the SLP meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

Finally, the current Tape A Tier provides a $0.00005 per share in assigned UTP securities in addition to the Tape A SLP credit in Tape A assigned securities for SLPs adding displayed liquidity to the Exchange if the SLP (1) qualifies for the SLP Tier 1 provide rate in both Tape B and C or quotes on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement in 300 or more assigned securities separately in Tapes B and Tape C pursuant to Rule 107B, and (2) where the SLP meets the 10% average quoting requirement pursuant to Rule 107B.

Most Favorable Rate for Affiliated SLPs

The Exchange proposes to amend the Price List to permit affiliated member organizations that are SLPs to obtain the most favorable rate in UTP securities when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates (*i.e.,* SLP Provide Tier 2 and SLP Provide Tier 1).

To effect this change, the Exchange proposes to add a footnote stating that affiliated member organizations that are SLPs would be eligible for the most favorable rate for any such security traded in an applicable month provided that one or both affiliated member organizations request and are approved for aggregation of eligible activity pursuant to the requirements set forth in the Price List when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates (*i.e.,* SLP Provide Tier 2 and SLP Provide Tier 1).

In order to qualify as affiliates for purposes of obtaining the more favorable rate and aggregating the adding liquidity of an ADV volumes for UTP securities, one or both member organizations that are SLPs would be required to follow the procedures set forth in the Price List for requesting that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.[6]

For example, assume a member organization with a SLP (SLP1) is affiliated with another member organization that also has a SLP (SLP2). Both SLP1 and SLP2 meet the quoting requirement in 500 securities each. If the adding liquidity for all for assigned Tape B SLP securities is 0.08% of Tape B CADV for SLP1 in the billing month and 0.06% of Tape B CADV for SLP2 in the billing month, the combined adding liquidity for SLP1 and SLP2 would be 0.14% of Tape B CADV, and both SLP1 and SLP2 would meet the 0.10% Tape B CADV adding requirement for Tape B Tier 1.

If in that same billing month, SLP1 has 8.0% quoting in SLP symbol XYZ and SLP2 has 12.0% quoting in that same symbol XYZ, both SLP1 and SLP2 would qualify for the SLP Tier 1 credit of $0.0032 in symbol XYZ because of SLP2's 12.0% quoting and the combined adding liquidity of SLP1 and SLP 2 of 0.14% of Tape B CADV. If SLP2 did not quote in symbol XYZ at least 10%, then SLP1 would not qualify for the SLP Tier 2 credit because the 8.0% quoting was below the 10% requirement, and SLP1 and SLP2 would instead receive the applicable non-tier, Non-SLP Tier 1 adding credit, or non-SLP Tier 2 adding credit.

[5] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM'').

[6] For purposes of applying any provision of the Exchange's Price List where the charge assessed, or credit provided, by the Exchange depends on the volume of a member organization's activity, a member organization may request that the Exchange aggregate its eligible activity with activity of such member organization's affiliates. A member organization requesting aggregation of eligible affiliate activity is required to (1) certify to the Exchange the affiliate status of member organizations whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate.

Quoting Requirement for SLP Tiered Credits

As noted above, the quoting requirement for SLP tiered credits (Tier 2, Tier 1 and Tape A Tier) is on an average daily basis, calculated monthly. In each case, the Exchange proposes to clarify that the quoting requirement would not be on an average daily basis, calculated monthly. To effectuate this change, the Exchange proposes to delete the phrase '', on an average daily basis,'' after ''quotes'' in Tier 2, Tier 1 and the Tape A Tier.

For example, if a SLP quotes 6.0% quoting in SLP symbol XYZ, a Tape B or Tape C security, on day 1 of the billing month, 12.0% on day 2, and 18.0% on day 3, that SLP would have an average quoting of 12.0% for the month after day 3 in symbol XYZ. Further assume that the SLP averaged the same quoting in at least 399 other Tape B and Tape C securities for that month. As a result, the SLP would have met the 400 symbol quoting requirement for SLP Tier 1 in Tape B and Tape C combined.

Combined Quoting Requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP Securities

As noted above, current Tier 2, Tier 1 and the Tape A Tier require SLPs adding displayed liquidity to the Exchange to quote on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement for a specified number of assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B.

The Exchange proposes to add a footnote after the word ''combined'' in Tier 2 and Tier 1 that would clarify that the combined SLP quoting requirement for those two tiers includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization. The footnote would also clarify that individual securities quoted by both an SLP-Prop and an SLMM are only counted once. In the above example, for instance, further assume an SLP meets the 10% quoting requirement in 350 securities in Tape B and Tape C and an affiliated SLP meets the requirement in 100 securities in Tape B and Tape C, 25 of which are the same as the first SLP. The total combined unique securities across the affiliated SLPs would be 425, or 350 plus 75, meeting the securities quoting for SLP Tier 1 in Tape B and Tape C combined for both affiliated SLPs.

Finally, the Exchange proposes to add the word ''combined'' following ''Tapes B and C'' and before ''pursuant to Rule 107B'' in the Tape A Tier which was inadvertently omitted and add the same footnote to the Tape A Tier.

The Exchange believes that these changes will add greater specificity and clarity to the Exchange's Price List.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Most Favorable Rate for Affiliated SLPs

The Exchange believes that the proposed rule change is reasonable because the SLP Provide Tier rates for UTP securities, established in previous rule filings, would remain the same.[9] The Exchange further believes that the proposed rule change is equitable because it establishes a manner for the Exchange to treat affiliated member organizations that are approved as SLPs for purposes of assessing charges or credits that are based on volume. The provision is also equitable because all member organizations seeking to aggregate their activity are subject to the same parameters, in accordance with established procedures set forth on the Price List regarding aggregation across affiliated member organizations. The Exchange further believes that the proposal is not unfairly discriminatory because it would serve to reduce disparity of treatment between member organizations with regard to the pricing of different services and reduce any potential for confusion on how SLP activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of member organizations that have divided their various business activities between separate corporate entities as compared to member organizations that operate those business activities within a single corporate entity. The Exchange further believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it aligns how affiliated member organizations that are approved as SLPs may aggregate volume in the same manner that affiliated member organizations currently aggregate non-SLP trading volume.

Quoting Requirement for SLP Tiered Credits

The Exchange believes that removing language that specifies that the quoting requirement for SLP tiered credits (Tier 2, Tier 1 and Tape A Tier) are on an average daily basis calculated monthly would provide for a simpler approach to calculating the quoting requirement and provide greater clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Combined Quoting Requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP Securities

The Exchange believes that adding the inadvertently omitted word ''combined'' to SLP Tier A and a footnote to SLP Tier 2, Tier 1 and the Tape A Tier clarifying that the combined SLP quoting requirement for those tiers in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization and that individual securities quoted by both an SLP-Prop and an SLMM are only counted once would provide greater clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Adding the proposed clarity to the Price List also reduces potential confusion and adds transparency to the Exchange's rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) & (5).

[9] *See, e.g.,* Securities Exchange Act Release No. 84583 (November 14, 2018), 83 FR 58637 (November 20, 2018) (SR–NYSE–2018–53), for the most recent pricing changes applicable to SLPs in UTP securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change is designed to encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the Exchange does not believe that the proposal to permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate in UTP securities would impose an undue burden on intra-market competition because all member organizations may qualify as an SLP. The Exchange notes that the Price List permits aggregation of activity for eligible affiliates of any member organization. Further, the Exchange believes that permitting member organizations that divided their various business activities between separate corporate entities to qualify for aggregation and receive the same treatment as a member organization that operates its business activities within a single corporate entity would encourage competition and the submission of additional liquidity to a public exchange. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,[11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–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–NYSE–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–NYSE–2019–13 and should be submitted on orbefore April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05811 Filed 3–26–19; 8:45 am]

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[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85391; File No. SR–CboeEDGX–2019–010]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Modify Its Fee Schedule

March 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its fee schedule.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to correct an inadvertent oversight to update amended transaction fees in a footnote. Specifically, on August 8, 2018, the Exchange filed a rule filing, SR–CboeEDGX–2018–032, which proposed, among other things, to (i) reduce the standard rebate for Customer complex orders with a non-Customer as the contra party in Penny Securities (*i.e.,* orders that yield fee code ZA) from $0.47 per contract to $0.45 per contract and (ii) reduce the rebate for Customer complex orders with a non-Customer as the contra party in Non-Penny Securities (*i.e.,* orders that yield fee code ZB) from $0.97 per contract to $0.80 per contract, effective August 1, 2018.[3] The Exchange notes that although it reflected the reduced rebates in the Fee Codes and Associated Fees table, it mistakenly failed to update the corresponding rebates referenced under Footnote 8 of the Fees Schedule, which includes a table setting forth pricing for complex order types. Accordingly, the Exchange proposes to update Footnote 8 to reflect the listed Customer rebate for fee code ZA as $0.45 per contract (instead of $0.47 per contract) and reflect the listed Customer rebate for fee code ZB as $0.80 per contract (instead of $0.97 per contract). No substantive changes are being made by the proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change to update inaccurate rebates under a footnote of the Fees Schedule, will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. As noted above, the proposed filing does not substantively change any transaction fees or rebates, but merely corrects an inadvertent oversight from a previous rule filing to update the relevant rebates under a footnote.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not address competitive issues, but rather, as discussed above, is merely intended to correct an inadvertent marking omission relating to a rate change made in a previous rule filing, which will alleviate potential confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83846 (August 14, 2018), 83 FR 42175 (August 20, 2018) (SR-CboeEDGX–2018–032).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–010 and should be submitted on or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05817 Filed 3–26–19; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85387; File No. SR–BOX–2019–07]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC ("BOX") Facility To Add the Concepts of Appointed OFP and Appointed MM

March 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2019, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to amend the Fee Schedule [sic] on the BOX Options Market LLC ("BOX") facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to amend Section VIII.A (Aggregate Billing) of the BOX Fee Schedule to add the concepts of "Appointed OFP" and "Appointed MM" which would increase opportunities for firms to qualify for various volume tier discounts and rebates.

The Exchange proposes to allow BOX Market Makers to designate an Order Flow Provider ("OFP")[5] as its "Appointed OFP" and to likewise allow OFPs to designate a Market Maker as its "Appointed MM."[6] As proposed, BOX Participants would effectuate the designation—of an Appointed OFP or Appointed MM—by each sending an email to the Exchange.[7] The Exchange would view corresponding emails as acceptance of such an appointment and would only recognize one such designation for each party once every 12-months, which designation would remain in effect unless or until the Exchange receives an email from either party indicating that the appointment has been terminated.[8] The Exchange believes that this requirement would impose a measure of exclusivity and would enable both parties to rely upon each other's, and potentially increase, transaction volumes executed on the Exchange, which is beneficial to all BOX Participants.

The Exchange proposes to allow a Participant to opt to combine its volume with that of its Appointed OFP/Appointed MM to qualify for the

[5] *See* BOX Rule 100(a)(46) (defining OFP as those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading).

[6] *See* proposed rule text Section VIII.A.4.

[7] *See id.*

[8] *See id.*

various incentive programs offered on the Exchange. First, a Participant with an Appointed OFP/Appointed MM would be able to aggregate certain of its volumes with that of its Appointed OFP/Appointed MM for purposes of qualifying for certain (1) rebates available in the Tiered Volume Rebate for Non-Auction Transactions for Market Makers and Public Customers (''Tiered Volume Rebate for Non-Auction Transactions''), (2) fees assessed for Primary Improvement Orders, and (3) rebates available to all Public Customer PIP and COPIP Orders of 250 and under contracts that do not trade with their contra order (''BOX Volume Rebate''). Currently, a Participant can only aggregate its volume with that of its affiliate(s).[9] The concept of Appointed OFP/Appointed MM would apply in instances where a Participant qualifies for a favorable fee by calculating qualifying volume through combining its transactions with that of Appointed OFP/Appointed MM. However, a Participant that has both an Appointed OFP/Appointed MM and any affiliate(s) may only aggregate volumes with one of those two, not both. Thus, the Exchange proposes to modify the Fee Schedule to provide that in calculating qualifications for volume of a Participant's activity, the Participant may request the Exchange to ''aggregate its eligible activity with the eligible activity of either its affiliate(s) or its Appointed OFP or its Appointed Market Maker.'' [10] The Exchange notes that other exchanges have adopted similar concepts.[11]

The Exchange does not propose to modify any of the volume qualifications or the associated fees and rebates for the various incentive programs at this time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposal would be available to all Market Makers and OFPs and the decision to be designated as an ''Appointed OFP'' or ''Appointed MM'' would be completely voluntary and a Participant may elect to accept this appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for certain rebates and discounts to avail themselves of these rebates/discounts, as well increase opportunities for firms that are currently eligible for certain rebates/discounts to potentially achieve a higher tier, thus qualifying to higher rebates/discounts. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any Market Maker—not just those with affiliates—to pool certain volumes to potentially qualify its Appointed OFP for rebates/discounts available on the Exchange. Moreover, the proposed change would allow any OFP, by virtue of designating an Appointed MM, to aggregate certain of its own volumes with the activity of its Appointed MM, which would enhance the OFP's potential to qualify for additional rebates and discounts. The Exchange believes these proposed changes would incentivize Appointed OFPs and OFPs with an Appointed MM to direct order flow to the Exchange, which additional liquidity would benefit all market participants (including those market participants that are not currently affiliates and/or opt not to become an Appointed party) by providing more trading opportunities and tighter spreads. The Exchange also notes that the proposed changes are reasonable as other exchanges have adopted similar concepts for their own affiliate-based incentive programs.[13]

Similarly, the proposal, which would permit the opportunity for both parties to rely upon each other's, and potentially increase, transaction volumes, is reasonable, equitable and not unfairly discriminatory because it may encourage Market Makers to increase in order flow, capital commitment and resulting liquidity on the Exchange would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads.

Further, the Exchange believes that the proposal is reasonable and equitably allocated because it is beneficial to all Exchange Participants because it enables parties to rely upon each other's transaction volumes executed on the Exchange, and potentially increase such volumes. In turn, the potential increase in order flow, capital commitment and resulting liquidity on the Exchange would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads.

The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only recognize one such designation for each party once every 12 months (from the date of its most recent designation), a requirement that would impose a measure of exclusivity while allowing both parties to rely upon each other's transaction volumes executed on the Exchange, and potentially increase such volumes, again, to the benefit of all market participants.

Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory and facilitates trading as it may benefit all market participants through increased order flow on the exchange, even to those market participants that are either currently affiliated by virtue of their common ownership or that opt not to become an Appointed OFP or Appointed Market Maker under this proposal. Further, as discussed herein, other exchanges have adopted similar concepts.[14]

For these reasons, the Exchange believes that the proposal 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. The Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for additional firms to qualify for various rebates and discounts, which may increase intermarket and intramarket competition by incenting Appointed OFPs and Appointed MMs to direct their orders to the Exchange, thereby increasing the volume of contracts traded on the Exchange and enhancing the quality of quoting. Enhanced market quality and increase transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

[9] *See* BOX Fee Schedule.

[10] *See* proposed language in Section VIII.A. of the BOX Fee Schedule.

[11] *See* Securities Exchange Act Release Nos. 77524 (April 5, 2016), 81 FR 21417 (April 11, 2016) (SR–BatsBZX–2016–04); 77526 (April 5, 2016), 81 FR 21405 (April 11, 2016) (SRBatsEDGX–2016–05); 77926 (May 26, 2016), 81 FR 35421 (June 2, 2016) (SR–CBOE–2016–045); 78382 (July 21, 2016), 81 FR 49293 (July 27, 2016) (SR–Phlx–2016–62); 80416 (April 10, 2017), 82 FR 18028 (April 14, 2017) (SR–MIAX–2017–15).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See supra* note 11.

[14] *See supra* note 11.

With regard to aggregating volume for Primary Improvement Orders, the Exchange does not believe that the proposed change will burden competition by creating a disparity between the fees an initiator pays and the fees a competitive responder pays that would result in certain Participants being unable to compete with initiators. The Exchange believes that the differential is reasonable as responders are willing to pay a higher fee for liquidity discovery. Further, the Exchange believes these changes will help promote competition by providing incentives for market participants to submit these orders, and thus benefit all Participants trading on the Exchange. Further, the Exchange notes that other exchanges allow appointed aggregation for incentive programs (which include transactions in their improvement mechanisms) currently in place.[15]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons discussed above, the Exchange believes that the proposed change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 Exchange Act[16] and Rule 19b–4(f)(2) thereunder,[17] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–07, and should be submitted on or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05815 Filed 3–26–19; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Cboe Exchange Inc. (''Cboe'') Fee Schedule, Affiliate Volume Plan (''AVP'') and Volume Incentive Plan (''VIP''). On Cboe, the Volume Incentive Program (''VIP'') credits each Trading Permit Holder (''TPH'') the per contract amount set forth in the VIP table for Public Customer orders (which include Simple AIM Orders, Simple non-AIM Orders, Complex AIM Orders and Complex non-AIM Orders) transmitted by that TPH which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds. Further, the Affiliate Volume Plan (''AVP'') allows a Market Maker to qualify for additional discounts on that Market Maker's LP Sliding Scale transaction fees when the Market Maker's Affiliate or Appointed OFP qualifies for credits under the VIP. While Cboe credits its TPHs and their Appointed OFPs or Appointed MMs under their fee schedule, the Exchange believes the end result is comparable to the proposed change discussed herein. Here, the Exchange proposes to allow Participants to aggregate volume for Primary Improvement Orders, while Cboe allows its TPHs to aggregate volume for their AIM Orders in order to receive a credit.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85392; File No. SR–MIAX–2019–05]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions

March 21, 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 11, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions, in order to codify the requirement that for each transaction in which a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Member [3] participates, the Member may indicate the name of any Clearing Member [4] through which the transaction will be cleared (''Give Up''), and to establish a new ''Opt In'' process by which a Clearing Member can restrict one or more of its OCC numbers and thereafter designate certain Members as authorized to Give Up a restricted clearing number.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its requirements in MIAX Options Rule 507 and Rule 513, related to the give up of a Clearing Member by a Member on Exchange transactions. By way of background, to enter transactions on the Exchange, a Member must either be a Clearing Member or must have a Clearing Member agree to accept financial responsibility for all of its transactions. Additionally, Rule 507 currently provides that when a Member executes a transaction on the Exchange, it must give up the name of a Clearing Member (the ''Give Up'') through which the transaction will be cleared (*i.e.,* ''give up''). The Exchange believes that this proposal would result in the fair and reasonable use of resources by both the Exchange and the Member. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.[5]

Recently, certain Clearing Members, in conjunction with the Securities Industry and Financial Markets Association (''SIFMA''), expressed concerns related to the process by which executing brokers on U.S. options exchanges (''Exchanges'') are allowed to designate or 'give up' a clearing firm for the purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[6]

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Member to opt in, at The Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Member, will allow the Clearing Member to specify which Members are authorized to give up that OCC clearing number. As proposed, Rule 507 will be amended to provide that for each transaction in which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared (''Give Up''), provided the Clearing Member has not elected to ''Opt In'', as defined in paragraph (b) of the proposed Rule, and restricted one or more of its OCC number(s) (''Restricted OCC Number'').[7] A Member may Give Up a Restricted OCC Number provided the Member has written authorization as described in paragraph (b)(2) (''Authorized Member'').

Proposed Rule 507(b) provides that Clearing Members may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') as described in subparagraph (b)(1) of Rule 507. If a Clearing Member Opts In, the Exchange will require written authorization from the Clearing Member permitting a Member to Give Up a Clearing Member's Restricted OCC Number. An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in subparagraph (3). If a Clearing Member does not Opt In, that Clearing Member's OCC number may be subject to Give Up by any Member.

Proposed Rule 507(b)(1) will set forth the process by which a Clearing Member may Opt In. Specifically, a Clearing Member may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Members.[8] A copy of the proposed form is attached in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the Member users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Members to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such Member users would still be able to Give Up that Restricted OCC Number during the ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Rule 507(b)(2) will set forth the process for Members to Give Up a Clearing Member's Restricted OCC Number. Specifically, a Member desiring to Give Up a Restricted OCC

[3] 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.

[4] The term ''Clearing Member'' means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84624 (November 19, 2018), 83 FR 60547 (November 26, 2018) (SR–Phlx–2018–72) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). *See also* Securities Exchange Act Release No. 84981 (January 9, 2019), 84 FR 837 (January 31, 2019) (SR–Phlx–2018–72) (Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). *See also* Securities Exchange Act Release No. 85136 (February 14, 2019) (SR–Phlx–2018–72) (Order Approving a Proposed Rule Change to Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions).

[6] *See id.*

[7] Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a Member may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. *See* note 10 below.

[8] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member's contact information to assist Members (to the extent they are not already Authorized Members) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Members of such updates on a periodic basis.

Number must become an Authorized Member.[9] The Clearing Member will be required to authorize a Member as described in subparagraph (1) or (3) of Rule 507(b) (*i.e.,* through an Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Member is a party to, as set forth in Rule 507(d).

Pursuant to proposed Rule 507(b)(3), a Clearing Member may amend the list of its Authorized Members or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Rule 507(b)(1), the Exchange may permit the Clearing Member to authorize, or remove from authorization for, a Member to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Member if they are no longer authorized to Give Up a Clearing Member's Restricted OCC Number. If a Clearing Member removes a Restricted OCC Number, any Member may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Rule 507(c) will provide that the System will not allow an unauthorized Member to Give Up a Restricted OCC Number. Specifically, the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.[10]

Furthermore, the Exchange proposes to adopt paragraph (d) to Rule 507 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Member that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Member or the Member.

The Exchange also proposes to adopt paragraph (e) to Rule 507 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 301, titled ''Just and Equitable Principles of Trade.'' This language will make clear that the Exchange will regulate an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent), and such behavior would be a violation of Exchange rules.

Furthermore, the Exchange proposes to adopt paragraph (f) to Rule 507 to codify that notwithstanding anything to the contrary in the proposed rule, if a Clearing Member that a Member has indicated as the Give Up rejects a trade, the Clearing Member that has issued a Letter of Guarantee pursuant to Rule 209, for such executing Member, shall be responsible for the clearance of the subject trade.

Finally, the Exchange proposes to amend Rule 513, which addresses the financial responsibility of Exchange options transactions clearing through Clearing Members, to clarify that this Rule will apply to all Clearing Members, regardless of whether or not they elect to Opt In, pursuant to proposed Rule 507. Specifically, the Exchange proposes to add that Rule 513 will apply to all Clearing Members who either (i) have Restricted OCC Numbers with Authorized Members pursuant to Rule 507, or (ii) have non-Restricted OCC Numbers.

2. Statutory Basis

The Exchange believes that its proposed rule change 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 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.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Members to identify any Clearing Member as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Rule 507 help alleviate this risk by enabling Clearing Members to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Member may Give Up those Restricted OCC Numbers. As described above, all other Members would be required to receive written authorization from the Clearing Member before they can Give Up that Clearing Member's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Members upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Members (other than Authorized Members) to seek authorization from Clearing Members in order to have the ability to give them up, each Member will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Member is party to that arrangement. The Exchange also notes that to the extent that the executing Member has a clearing arrangement with a Clearing Member (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing Members guarantor.[13] Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which protects investors and the public interest. Additionally, the Exchange believes that adopting paragraph (e) of Rule 507 will make clear that an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent) will be a

[9] The Exchange will develop procedures for notifying Members that they are authorized or unauthorized by Clearing Members.

[10] Specifically, the System will block the entry of the order from the outset. This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a Member if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the Member becoming an Authorized Member. The System will also restrict any post-trade allocation changes if the Member is not authorized to use a Restricted OCC Number.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Rule 209 (providing that each Member shall provide a letter of guarantee for the Member's trading activities on the Exchange from a Clearing Member in a form and manner prescribed by the Exchange). *See also* proposed Rule 507(f).

violation of the Exchange's rules, and that such behavior would subject a Member to disciplinary action. For these reasons, the Exchange believes that its proposed changes to Rule 507 and Rule 513, is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by codifying the requirement that for each transaction in a which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared, provided the Clearing Member has not elected to Opt In.

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 an unnecessary burden on intra-market competition because it will apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make MIAX Options more attractive for trading, market participants trading on other exchanges can always elect to become Members on MIAX Options to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Members under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing relationships while continuing to allow market participant choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, MIAX Options requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change by Nasdaq Phlx LLC.[17] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will provide transparency and operational certainty including through the use of a standardized give up process and would align the give up process with other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–MIAX–2019–05 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–2019–05. 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

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 5.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2019–05 and should be submitted on or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05808 Filed 3–26–19; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85388; File No. SR–CboeBZX–2019–001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Under BZX Rule 14.11(c)(3) Shares of the Global X Russell 2000 Covered Call ETF of Global X Funds

March 21, 2019.

On January 28, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under Rule 14.11(c)(3) shares of the Global X Russell 2000 Covered Call ETF (''Fund'') of Global X Funds. The proposed rule change was published for comment in the **Federal Register** on February 15, 2019.[3] On March 14, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.[4] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 1, 2019. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 16, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBZX–2019–001).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05812 Filed 3–26–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85099 (Feb. 11, 2019), 84 FR 4584.

[4] Amendment No. 1 to the proposed rule change is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2019-001/srcboebzx2019001-5145199-183369.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85389; File No. SR–NASDAQ–2019–016]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Protocol Ouch To Trade Options or OTTO on The Nasdaq Options Market LLC

March 21, 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 13, 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 delay the protocol ''Ouch to Trade Options'' or ''OTTO'' on The Nasdaq Options Market LLC (''NOM'').

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq filed a rule change [3] which adopted a new protocol ''Ouch to Trade Options'' or ''OTTO'' [4] and proposed to rename and modify the current OTTO protocol as ''Quote Using Orders'' or ''QUO.'' [5] The Exchange subsequently filed a rule change to amend Chapter VI, Section 6(e), titled ''Detection of Loss of Communication'' which describes the impact to NOM protocols in the event of a loss of a communication. The Exchange accounted for both the new OTTO and renamed and modified QUO within this rule. Similarly, the Exchange amended Chapter VI, Section 8, ''Nasdaq Opening and Halt Cross'' to account for the new OTTO and renamed and modified QUO within this rule. Finally, the Exchange amended Chapter VI, Section 19, ''Data Feeds and Trade Information'' to amend ''OTTO DROP'' to ''QUO DROP'' and noted within Chapter VI, Section 18(a)(1) related to Order Price Protection rule or ''OPP'' that OPP shall not apply to orders entered through QUO.[6]

Both the Prior Rule Change and the Subsequent Rule Change indicated the aforementioned rule changes would be implemented for QUO and OTTO in Q4 of 2018 with the date announced via an Options Traders Alert. The Exchange filed a rule change implementing QUO and delaying the introduction of the OTTO functionality until Q1 2019 by announcing the date of implementation via an Options Traders Alert.[7] The Exchange proposes to further delay the implementation of OTTO functionality until Q3 2019. The Exchange will issue an Options Trader Alert notifying Participants when this functionality will be available.

The Exchange proposes this delay to allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by delaying the OTTO functionality to allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the adoption of the OTTO functionality does not impose an undue burden on competition. Delaying the OTTO functionality will allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the waiver will allow the Exchange additional time to implement this functionality and for Participants to sign-up for this new port and test with the Exchange and ensure a successful implementation of the OTTO. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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

[3] *See* Securities Exchange Act Release No. 83888 (August 20, 2018), 83 FR 42954 (August 24, 2018) (SR–NASDAQ–2018–069) (''Prior Rule Change''). In the Prior Rule Change the Exchange stated that it would issue an Options Trader Alert announcing the implementation date in Q4 2019 [sic].

[4] As modified by the Prior Rule Change, OTTO is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. *See* NOM Rules at Chapter VI, Section 21(a)(i)(C).

[5] QUO is an interface that allows NOM Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) Options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by NOM Market Makers over this interface are treated as quotes. *See* NOM Rules at Chapter VI, Section 21(a)(i)(D).

[6] *See* Securities Exchange Act Release No. 84559 (November 9, 2019), 83 FR 57774 (November 16, 2018) (SR–NASDAQ–2018–085) (''Subsequent Rule Change'').

[7] *See* Securities Exchange Act Release No. 84723 (December 4, 2018), 83 FR 63692 (December 11, 2018) (SR–NASDAQ–2018–097). The Exchange proposed to immediately implement QUO as of the effectiveness of SR–NASDAQ–2018–097 and delay the implementation of OTTO by issuing an Options Trader Alert announcing the implementation date in Q1 2019. The QUO implementation became effective upon filing on November 26, 2018.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–2019–016 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–2019–016. 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–2019–016 and should be submittedon or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05806 Filed 3–26–19; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85393; File No. SR–EMERALD–2019–15]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule

March 21, 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 15, 2019, MIAX Emerald, LLC (''MIAX Emerald'' 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 Emerald Fee Schedule (the ''Fee Schedule'') by adopting rebates and fees applicable to participants trading options on and/or using services provided by MIAX Emerald.

MIAX Emerald plans to commence operations as a national securities exchange registered under Section 6 of the Act[3] on March 1, 2019.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] *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).

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 establish transaction rebates and fees, regulatory fees, and certain non-transaction fees applicable to market participants trading options on and/or using services provided by the Exchange. These rebates and fees will apply to all market participants trading options on and/or using services provided by MIAX Emerald.

Definitions

The Exchange has included a Definitions section at the beginning of the Fee Schedule. The purpose of the Definitions section is to streamline the Fee Schedule by placing many of the defined terms used in the Fee Schedule in one location at the beginning of the Fee Schedule. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 100. Any defined terms that are also defined or otherwise explained in the Exchange Rules contain a cross reference to the relevant Exchange Rule. The Exchange notes that other exchanges have Definitions sections in their respective fee schedule,[5] and the Exchange believes that including a Definitions section in the front of the Exchange's Fee Schedule makes the Fee Schedule more user-friendly.

Exchange Rebates/Fees

The proposed Fee Schedule sets forth transaction rebates and fees for all options traded on the Exchange in amounts that vary depending upon certain factors, including the type of

[5] *See* Exchange Act Release Nos. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–10); 76453 (November 17, 2015), 80 FR 72999 (November 23, 2015) (SR–EDGX–2015–56); 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

market participant (''Origin'') for whom the transaction is executed, the contra party to a transaction, whether in a Penny class or a non-Penny class, and whether the transaction is in simple, complex, or PRIME [6] or cPRIME,[7] and the amount of volume executed by the Member, as described more fully below.

Transaction Fees

Tiers and their application are defined in Tier section (1)(a)(ii)

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Taker ^	Maker	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Market Maker	1	($0.35)	$0.50	$0.10	$0.47	$0.50	$0.05	$0.05	$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.48	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.48	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer *	1	(0.48)	0.47	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	(0.48)	0.47	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	(0.48)	0.47	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.45	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker ~	Agency	Contra	Responder
Market Maker	1	($0.45)	$0.99	$0.20	$0.86	$0.88	$0.05	$0.05	$0.05
	2	(0.45)	0.99	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	0.99	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	0.94	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer *	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	(1.05)	0.82	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

[6] Price Improvement Mechanism (''PRIME'') is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[7] A Complex PRIME or ''cPRIME'' Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policy .12. *See* Exchange Rule 518(b)(7).

In general, the Exchange proposes that Add/Remove Tiered Rebates/Fees applicable to all market participants will be based upon a threshold tier structure (''Tier'') that is applicable to transaction fees, as set forth in the Fee Schedule. Tiers are determined on a monthly basis and are based on three alternative calculation methods (as defined below). The calculation method that results in the highest Tier achieved by the Member shall apply to all Origin types by the Member. The monthly volume thresholds for each method, associated with each Tier, are calculated as the total monthly volume executed by the Member [8] in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,[9] (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (''CTCV'') (as the denominator). CTCV, which is defined in the Definitions section of the Fee Schedule, means Customer Total Consolidated Volume calculated as the total national volume cleared at The Options Clearing Corporation (''OCC'') in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine).[10] The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule.

In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. The Exchange additionally proposes to aggregate the volume of Members and their Affiliates.[11] Members that place resting liquidity, *i.e.,* orders on the MIAX Emerald System, will be assessed the specified ''maker'' rebate or fee (each a ''Maker'') and Members that execute against resting liquidity will be assessed the specified ''taker'' fee or rebate (each a ''Taker'').[12] Finally, Members shall be assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Pilot Program [13] (''Penny classes'') than for order executions in standard option classes which are not in the Penny Pilot Program (''Non-Penny classes''), for which Members will be assessed a higher transaction fees and larger rebates.

The Add/Remove Tiered Rebates/Fees proposed by the Exchange are similar in structure to and in the range of the transaction rebates and fees charged by Cboe BZX Options Exchange (''Cboe BZX'') to its market participants.[14] The Exchange notes the proposed transaction rebate and fee structure is similar to that of Cboe BZX, in that the Exchange proposes to use CTCV as the denominator in determining the volume for each Tier and Cboe BZX uses OCC Clearing Volume (''OCV'') as its denominator in the volume for each of its tiers. OCV is the total equity and ETF options volume that clears in the Customer range at the OCC for the month for which the fees apply, excluding volume on any day that the Exchange experiences an exchange system disruption and on any day with a scheduled early market close. CTCV similarly encompasses volume from all Customer clearing types. However, the Exchange's proposed transaction rebate and fee structure is not identical to that of Cboe BZX. A distinction is the fact that the Exchange proposes to use a Member's actual, total monthly volume as the numerator in determining the volume for each Tier and Cboe BZX instead uses an average of daily volume (''ADV'') as its numerator in the volume for each of its tiers. Additionally, Cboe BZX includes in the volume calculations for certain of its tiers applicable to its market participants the volume by such Member on Cboe BZX equities market. Unlike Cboe BZX, the Exchange does not presently offer any such comparable arrangement.[15] The Exchange notes that these are high level similarities and differences regarding the method of using volume cleared in the Customer range at the OCC as the measuring unit (denominator), and specific fees are discussed below.

The Exchange's transaction rebates and fees structure is also similar to that of Nasdaq GEMX, LLC (''GEMX'').[16] GEMX has adopted a maker-taker tiered fee structure based upon volume that is also further delineated by whether the transaction is in Penny and SPY classes or Non-Penny classes (Cboe BZX has also adopted this type of maker-taker tiered fee structure).[17] The Exchange also proposes to delineate based on whether the transaction is in Penny or Non-Penny classes, and further delineate within the tables based on whether the order is simple, complex, or PRIME/cPRIME. Similar to the structure proposed by the Exchange, the highest tier threshold attained by a GEMX member applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. All eligible volume from affiliated members is aggregated in determining applicable tiers, provided

[8] ''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* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[9] ''Excluded Contracts'' means any contracts routed to an away market for execution.

[10] A ''Matching Engine'' is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[11] ''Affiliate'' means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. *See* the Definitions Section of the Fee Schedule.

[12] For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

[13] *See* Securities Exchange Act Release No. 85225 (March 1, 2019), 84 FR 68353 (March 7, 2019)(SR–EMERALD–2019–06).

[14] *See* Cboe BZX Options Fee Schedule, Transaction Fees.

[15] *Id.*

[16] *See* Nasdaq GEMX, Options 7 Pricing Schedule, Section 3 Regular Order Fees and Rebates.

[17] *See* Cboe BZX Options Fee Schedule.

there is at least 75% common ownership between the members as reflected on each member's Form BD, Schedule A.

Tiers and Their Application

The Exchange proposes that its maker-taker tiered fee structure based on volume be determined based on three alternative calculation methods. Specifically, the Exchange proposes to add a section to its Fee Schedule titled ''Tiers and their Application,'' which sets forth volume thresholds based on different types of volume that can be achieved by Members. The proposed section will be included in the Fee Schedule as follows:

(ii) Tiers and their Application

Tiers are determined on a monthly basis. Tiers are determined based on three (3) alternative calculation methods. The calculation method that results in the highest Tier achieved by the Member shall apply to all Origin types by the Member. Following are the three (3) alternative calculation methods:

1. Total Member sides volume, based on % of CTCV (''Method 1'');

2. Total Emerald Market Maker sides volume, based on % of CTCV (''Method 2'');

3. Total Priority Customer Maker sides volume, based on % of CTCV (''Method 3'').

Tier	Method 1	Method 2	Method 3
1	0.00%–0.40%	0.00%–0.10%	0.00%–0.10%.
2	Above 0.40%–0.80%	Above 0.10%–0.50%	Above 0.10%–0.35%.
3	Above 0.80%–1.20%	Above 0.50%–0.75%	Above 0.35%–0.60%.
4	Above 1.20%	Above 0.75%	Above 0.60%.

Each method is calculated based on the total monthly sides executed by the Member in all options classes on MIAX Emerald in the relevant Origin(s) and/or applicable liquidity (*i.e.,* Priority Customer Maker), not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) CTCV (as the denominator). The per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates in the Tiers.

The Exchange believes that its proposed methodology for calculating its tiers is reasonable, as this methodology is similar to how another exchange calculates its tiers. The Exchange's methodology, which analyzes three alternative calculation methods and then selects the method that is the highest tier reached to the Member, is similar to how GEMX calculates its tiers.[18] For example, GEMX has four qualifying tiers, the same number that the Exchange is proposing. GEMX calculates its tiers using CTCV (Customer Total Consolidated Volume) at the OCC, which is fundamentally the same denominator method that the Exchange is proposing. GEMX aggregates volume of affiliated members, as the Exchange is also proposing. GEMX has two alternative calculation methods, however the Exchange is proposing three alternative calculation methods, which the Exchange believes provides greater benefit to Members, as there is an additional method to enable qualification for a higher tier. GEMX, for certain of its tiers, offers a calculation that looks at absolute ADV volume (*i.e.* 20,000 ADV), in addition to, or in lieu of, percentages of CTCV, whereas the Exchange is proposing to only look at monthly percentages of CTCV.

Priority Customers

Transaction rebates/fees applicable to all orders submitted by a Member for the account of a Priority Customer[19] will be assessed according to the following sections of the tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Priority Customer *	1	($0.48)	$0.47	($0.25)	($0.25)	($0.25)	$0.00	$0.05	$0.05
	2	(0.48)	0.47	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	(0.48)	0.47	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.45	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker ~	Agency	Contra	Responder
Priority Customer *	1	($0.85)	$0.85	($0.40)	($0.40)	($0.40)	$0.00	$0.05	$0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05

[18] *See* Nasdaq GEMX, Options 7 Pricing Schedule.

[19] ''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* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretations and Policies .01.

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME—Continued

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker ~	Agency	Contra	Responder
	4	(1.05)	0.82	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

The rebates and fees proposed by the Exchange for Priority Customer transactions are similar to those assessed in select tiers by GEMX for transactions on behalf of its Priority Customers for simple orders. Transactions on behalf of a GEMX ''Priority Customer'' are also similar to transactions by a Member on behalf of the Exchange's Origin type ''Priority Customer.''[20] For example, for a GEMX member adding liquidity in a Penny Pilot class on behalf of the account of a Priority Customer, GEMX pays a rebate of (i) $0.25 in Tier 1; (ii) $0.40 in Tier 2; (iii) $0.48 in Tier 3; and (iv) $0.53 in Tier 4.

Additionally, for a GEMX member taking liquidity in a Penny Pilot class on behalf of the account of a Priority Customer, GEMX assesses a fee of $0.48 in Tier 1; (ii) $0.47 in Tier 2; (iii) $0.47 in Tier 3; and (iv) $0.45 in Tier 4.[21]

The rebates proposed by the Exchange for Priority Customer complex transactions in Penny classes are also similar to those rebates paid by Nasdaq ISE, LLC (''Nasdaq ISE'') to its ''Priority Customers'' for ''Priority Customer Complex Tier'' transactions in Nasdaq ISE ''Select Symbols.''[22] For example, for Priority Customer complex orders in Select Symbols, Nasdaq ISE will pay a rebate of (i) $0.25 in Tier 1; (ii) $0.30 in Tier 2; (iii) $0.35 in Tier 3; (iv) $0.40 in Tier 4; (v) $0.45 in Tier 5; (vi) $0.46 in Tier 6; (vii) $0.48 in Tier 7; and (viii) $0.50 in Tiers 8 and 9.[23]

Additionally, for Priority Customer complex orders in Non-Select Symbols, Nasdaq ISE will pay a rebate of (i) $0.40 in Tier 1; (ii) $0.55 in Tier 2; (iii) $0.70 in Tier 3; (iv) $0.75 in Tier 4; (v) $0.80 in Tiers 5, 6 and 7; and (vi) $0.85 in Tiers 8 and 9.[24]

The fees proposed by the Exchange for Priority Customer transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Priority Customers for orders executed using GEMX's ''Price Improvement Mechanism'' (''PIM'') in both Penny and Non-Penny classes. For example, in both Penny and Non-Penny classes, GEMX members will be assessed a fee of (i) $0.00 for Priority Customer orders on the agency side; (ii) $0.05 per contract for Priority Customer orders on the contra-side; and (iii) $0.05 per contract for all Responses. The Exchange's fee structure for PRIME/cPRIME is similar to GEMX in that both of these structures do not have breakup credits and higher response fees for price improvement auctions.

MIAX Emerald Market Makers

Transaction rebates/fees applicable to all Market Makers[25] will be assessed according to the following sections of the tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Market Maker	1	($0.35)	$0.50	$0.10	$0.47	$0.50	$0.05	$0.05	$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.48	0.10	0.47	0.50	0.05	0.05	0.05

[20] *See supra* note 16.

[21] *See id.*

[22] *See* Nasdaq ISE, Options 7 Pricing Schedule, Section 4 Complex Order Fees and Rebates.

[23] *See id.*

[24] *See id.*

[25] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker ~	Agency	Contra	Responder
Market Maker	1	($0.45)	$0.99	$0.20	$0.86	$0.88	$0.05	$0.05	$0.05
	2	(0.45)	0.99	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	0.99	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	0.94	0.20	0.86	0.86	0.05	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

The tiered Market Maker rebates/fees proposed by the Exchange are similar in structure to the transaction rebates and fees charged by GEMX to its market makers for simple orders and quotes. For example, for a market maker adding liquidity in a Penny Pilot class, GEMX pays a rebate of (i) $0.28 in Tier 1; (ii) $0.30 in Tier 2; (iii) $0.35 in Tier 3; and (iv) $0.45 in Tier 4.[26]

For a market maker adding liquidity in a Non-Penny Pilot class, GEMX pays a rebate of (i) $0.40 in Tier 1; (ii) $0.42 in Tier 2; (iii) $0.45 in Tier 3; and (iv) $0.75 in Tier 4.[27]

Additionally, for a market maker taking liquidity in a Penny Pilot class, GEMX assesses a fee of (i) $0.50 in Tier 1; (ii) $0.50 in Tier 2; (iii) $0.50 in Tier 3; and (iv) $0.48 in Tier 4.[28]

The fees proposed by the Exchange for Market Maker complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE to its ''Market Makers'' for complex transactions in Nasdaq ISE Select Symbols. For example, for a Market Maker adding liquidity in a Select Symbol, Nasdaq ISE assesses a fee of (i) $0.10 when trading against Origins not Priority Customer; and (ii) a base $0.47 when trading against Priority Customers. Additionally, for a Market Maker taking liquidity in a Select Symbol, Nasdaq ISE assesses a base fee of $0.50.[29]

For a Market Maker adding liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of (i) $0.20 when trading against Origins not Priority Customer; and (ii) $0.86 when trading against Priority Customers. Additionally, for a Market Maker taking liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of $0.86.[30]

The fees proposed by the Exchange for Market Maker transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Market Makers for orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. For example, in both Penny and Non-Penny classes, GEMX members will be assessed a fee of (i) $0.05 for Market Maker orders on the agency side; (ii) $0.05 per contract for Market Maker orders on the contra-side; and (iii) $0.05 per contract for all Responses. The Exchange's fee structure for PRIME/cPRIME is similar to GEMX in that both of these structures do not have breakup credits and higher responses for price improvement auctions.

Non-MIAX Emerald Market Makers

Transaction rebates/fees applicable to all orders submitted by a Member for the account of a non-MIAX Emerald Market Maker will be assessed according to the following sections of the tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Non-MIAX Emerald Market Maker	1	($0.25)	$0.50	$0.20	$0.50	$0.50	$0.05	$0.05	$0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.48	0.20	0.50	0.50	0.05	0.05	0.05

[26] *See supra* note 16.

[27] *See id.*

[28] *See id.*

[29] *See supra* note 22.

[30] *See id.*

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker ~	Agency	Contra	Responder
Non-MIAX Emerald Market Maker	1	($0.25)	$0.99	$0.20	$0.88	$0.88	$0.05	$0.05	$0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

The tiered rebates/fees assessable to Non-MIAX Emerald Market Makers proposed by the Exchange for simple orders are also similar in structure to and in the range of the transaction rebates and fees charged by GEMX for transactions for the accounts of ''Non-Nasdaq GEMX Market Makers (FarMM).'' For example, for transactions on behalf of Non-Nasdaq GEMX Market Makers (FarMM) adding liquidity in a Penny Pilot class, GEMX pays a rebate of $0.25 in Tier 1.[31]

Additionally, for transactions on behalf of Non-Nasdaq GEMX Market Makers (FarMM) taking liquidity in a Penny Pilot class, GEMX assesses a fee of (i) $0.50 in Tier 1; (ii) $0.50 in Tier 2; (iii) $0.50 in Tier 3; and (iv) $0.48 in Tier 4.[32]

The fees proposed by the Exchange for Non-MIAX Emerald Market Maker complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE to a ''Non-Nasdaq ISE Market Maker (FarMM)'' for complex transactions in Nasdaq ISE Select Symbols. For example, for a Non-Nasdaq ISE Market Maker (FarMM) adding liquidity in a Select Symbol, Nasdaq ISE assesses a fee of (i) $0.20 when trading against Origin not Priority Customer; and (ii) $0.48 when trading against Priority Customers.[33] Additionally, for a Non-Nasdaq ISE Market Maker (FarMM) taking liquidity in a Select Symbol, Nasdaq ISE assesses a fee of $0.50.[34]

For a Non-Nasdaq ISE Market Maker (FarMM) adding liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of (i) $0.20 when trading against Origin not Priority Customer; and (ii) $0.88 when trading against Priority Customers.[35] Additionally, for a Non-Nasdaq ISE Market Makers (FarMM) taking liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of $0.88.[36]

The fees proposed by the Exchange for Non-MIAX Emerald Market Maker transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Non-Nasdaq GEMX Market Makers (FarMM) for orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. For example, in both Penny and Non-Penny classes, GEMX members will be assessed a fee of (i) $0.05 for Non-Nasdaq GEMX Market Maker (FarMM) orders on the agency side; (ii) $0.05 per contract for Non-Nasdaq GEMX Market Maker (FarMM) orders on the contra-side; and (iii) $0.05 per contract for all Responses.[37] The Exchange's fee structure for PRIME/cPRIME is similar to GEMX in that both of these structures do not have a breakup credits and higher responses for price improvement auction.

Firm Proprietary/Broker-Dealer

Transaction rebates/fees applicable to all orders submitted by a Member for the account of a Firm Proprietary or Broker-Dealer will be assessed according to the following sections of the tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker ^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Firm Proprietary/Broker-Dealer	1	($0.25)	$0.50	$0.20	$0.50	$0.50	$0.05	$0.05	$0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05

[31] *See supra* note 16.

[32] *See id.*

[33] *See supra* note 22.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See supra* note 16.

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker~	Agency	Contra	Responder
Firm Proprietary/Broker-Dealer	1	($0.25)	$0.99	$0.20	$0.88	$0.88	$0.05	$0.05	$0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05

^Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

~A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

#For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

The tiered rebates/fees assessable to Firm Proprietary/Broker-Dealers proposed by the Exchange for simple orders are also similar in structure to and in the range of the transaction rebates and fees charged by GEMX for transactions for the accounts of ''Firm Proprietary/Broker-Dealer.'' For example, for transactions on behalf of Firm Proprietary/Broker-Dealer adding liquidity in a Penny Pilot class, GEMX pays a rebate of $0.25 in Tier 1.[38]

Additionally, for transactions on behalf of Firm Proprietary/Broker-Dealer taking liquidity in a Penny Pilot class, GEMX assesses a fee of (i) $0.50 in Tier 1; (ii) $0.50 in Tier 2; (iii) $0.50 in Tier 3; and (iv) $0.49 in Tier 4.[39]

The fees proposed by the Exchange for Firm Proprietary/Broker-Dealer complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE to ''Firm Proprietary/Broker-Dealer'' order for complex transactions in Nasdaq ISE Select Symbols. For example, for a Firm Proprietary/Broker-Dealer adding liquidity in a Select Symbol, Nasdaq ISE assesses a fee of (i) $0.10 when trading against Origin not Priority Customer; and (ii) $0.48 when trading against Priority Customers.[40] Additionally, for a Firm Proprietary/Broker-Dealer taking liquidity in a Select Symbol, Nasdaq ISE assesses a fee of $0.50.[41]

For a Firm Proprietary/Broker-Dealer adding liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of (i) $0.20 when trading against Origin not Priority Customer; and (ii) $0.88 when trading against Priority Customers.[42] Additionally, for a Firm Proprietary/Broker-Dealer taking liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of $0.88.[43]

The fees proposed by the Exchange for Firm Proprietary/Broker-Dealer transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Firm Proprietary/Broker-Dealer orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. For example, in both Penny and Non-Penny classes, GEMX members will be assessed a fee of (i) $0.05 for Firm Proprietary/Broker-Dealer orders on the agency side; (ii) $0.05 per contract for Firm Proprietary/Broker-Dealer orders on the contra-side; and (iii) $0.05 per contract for all Responses. The Exchange's fee structure for PRIME/cPRIME is similar to GEMX in that both of these structures do not have a breakup credit or higher response fees for price improvement auctions.

Non-Priority Customers

Transaction rebates/fees applicable to all orders submitted by a Member for the account of a non-Priority Customers will be assessed according to the following sections of the tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker	Agency	Contra	Responder
Non-Priority Customer	1	($0.25)	$0.50	$0.20	$0.50	$0.50	$0.05	$0.05	$0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker~	Agency	Contra	Responder
Non-Priority Customer	1	($0.25)	$0.99	$0.20	$0.88	$0.88	$0.05	$0.05	$0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05

[38] *See supra* note 16.

[39] *See id.*

[40] *See supra* note 22.

[41] *See id.*

[42] *See id.*

[43] *See id.*

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME—Continued

Origin	Tier	Simple		Complex #			PRIME/cPRIME✧		
		Maker	Taker^	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker~	Agency	Contra	Responder
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05

^Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

~A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

✧For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

The tiered rebates/fees assessable to Non-Priority Customers proposed by the Exchange are also similar in structure to and in the range of the transaction rebates and fees for simple orders charged by GEMX for transactions for the accounts of ''Professional Customers.''

For example, for transactions on behalf of Professional Customers adding liquidity in a Penny Pilot class, GEMX pays a rebate of $0.25 in Tier 1.[44]

Additionally, for transactions on behalf of Professional Customers taking liquidity in a Penny Pilot class, GEMX assesses a fee of (i) $0.50 in Tier 1; (ii) $0.50 in Tier 2; (iii) $0.50 in Tier 3; and (iv) $0.49 in Tier 4.[45]

The fees proposed by the Exchange for Non-Priority Customer complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE for ''Professional Customers'' for complex transactions in Nasdaq ISE Select Symbols. For example, for a Professional Customer adding liquidity in a Select Symbol, Nasdaq ISE assesses a fee of (i) $0.10 when trading against non-Priority Customers; and (ii) $0.48 when trading against Priority Customers.[46] Additionally, for a Professional Customer taking liquidity in a Select Symbol, Nasdaq ISE assesses a fee of $0.50.[47]

For a Professional Customer adding liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of (i) $0.20 when trading against non-Priority Customers; and (ii) $0.88 when trading against Priority Customers.[48] Additionally, for a Professional Customer taking liquidity in a Non-Select Symbol, Nasdaq ISE assesses a fee of $0.88.[49]

The fees proposed by the Exchange for Non-Priority Customer transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Professional Customer orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. For example, in both Penny and Non-Penny classes, GEMX members will be assessed a fee of (i) $0.05 for Professional Customer orders on the agency side; (ii) $0.05 per contract for Professional Customer orders on the contra-side; and (iii) $0.05 per contract for all Responses. The Exchange's fee structure for PRIME/cPRIME is similar to GEMX in that both of these structures do not have a breakup credit and higher responses fees for price improvement auctions.

QCC Fees

The Exchange proposes to adopt new Section (1)(a)iii of the Fee Schedule to establish transaction fees and rebates for QCC Orders:

Types of market participants	QCC Order		
	Per contract fee for initiator	Per contract fee for contraside	Per contract rebate for initiator
Priority Customer	$0.00	$0.00	($0.10)
Public Customer that is Not a Priority Customer	0.15	0.15	(0.10)
MIAX Emerald Market Maker	0.15	0.15	(0.10)
Non-MIAX Emerald Market Maker	0.15	0.15	(0.10)
Non-Member Broker-Dealer	0.15	0.15	(0.10)
Firm	0.15	0.15	(0.10)

Rebates will be delivered to the Member that enters the order into the MIAX Emerald system, but will only be paid on the initiating side of the QCC transaction. However, no rebates will be paid for QCC transactions for which both the initiator and contra-side orders are Priority Customers. A QCC transaction is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts coupled with a contra-side order to sell (buy) an equal number of contracts.

A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.[50] The Exchange proposes to establish a transaction fee for all Origins other than Priority Customer QCC Orders of $0.15 per contract side (Priority Customer orders will not be assessed a charge). In addition, the Exchange proposes to adopt a $0.10 per contract rebate for the initiating order side, regardless of Origin code. The Exchange proposes to explicitly provide in the Fee Schedule that the rebate will be assessed to the Member that enters the order into the

[44] *See supra* note 16.

[45] *See id.*

[46] *See supra* note 22.

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretation and Policy .01 to Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Exchange Rule 516(j).

System, but will only be assessed on the initiating side of the QCC transaction. However, no rebates will be assessed for QCC transactions in which both the initiator and contra-side are Priority Customers.

Additionally, the Exchange proposes to state explicitly in the Fee Schedule that a QCC transaction is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts. The Exchange notes that with regard to order entry, the first order submitted into the system is marked as the initiating side and the second order is marked as the contra side. The purpose of this proposed fee is to incentivize the sending of QCC Orders to the Exchange. The Exchange notes that other competing exchanges similarly provide rebates on QCC initiating orders.[51]

cQCC Fees

The Exchange proposes to adopt new Section (1)(a)iv of the Fee Schedule to establish transaction fees and rebates for cQCC[52] Orders, which are identical to transaction fees and rebates that the Exchange proposes to charge for simple QCC Orders:

Types of market participants	QCC Order		
	Per contract fee for initiator	Per contract fee for contra-side	Per contract rebate for initiator
Priority Customer	$0.00	$0.00	($0.10)
Public Customer that is Not a Priority Customer	0.15	0.15	(0.10)
MIAX Emerald Market Maker	0.15	0.15	(0.10)
Non-MIAX Emerald Market Maker	0.15	0.15	(0.10)
Non-Member Broker-Dealer	0.15	0.15	(0.10)
Firm	0.15	0.15	(0.10)

All fees and rebates are per contract per leg. Rebates will be delivered to the Member that enters the order into the MIAX Emerald system, but will only be paid on the initiating side of the cQCC transaction. However, no rebates will be paid for cQCC transactions for which both the initiator and contra-side orders are Priority Customers. A cQCC transaction is comprised of an 'initiating complex order' to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts.

This cQCC Fee table (including the amounts therein) is identical to the QCC Fee table (including the amounts therein), which is contained in Section (1)(a)(iii) of the Fee Schedule.

The Exchange also proposes to adopt certain explanatory text relating to the cQCC Fee table, just as the Exchange currently has relating to the simple QCC Fee table. The text provides that all fees and rebates are per contract per leg. Also, rebates will be delivered to the Member that enters the order into the MIAX Emerald system, but will only be assessed on the initiating side of the cQCC transaction. However, no rebates will be assessed for cQCC transactions for which both the initiator and contra-side are Priority Customers. A cQCC transaction is comprised of an 'initiating complex order' to buy (sell) where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts.

C2C and cC2C Fees

The Exchange proposes to adopt new Section (1)(a)(v), C2C[53] and cC2C[54] Fees, to the Fee Schedule to clarify and establish transaction fees and rebates for C2C Orders and cC2C Orders.

Types of market participants	C2C and cC2C Order per contract fee/rebate
Priority Customer	*$0.00*

The Exchange notes that it proposes to offer trading in C2C Orders.[55] Because C2C Orders are comprised entirely of Priority Customer orders, the Exchange proposes to assess a $0.00 per contract transaction fee and a $0.00 rebate to such orders. However, the Exchange desires to clarify and make explicit that C2C Orders will be assessed a $0.00 per contract transaction fee and assessed a $0.00 per contract rebate. The Exchange is also proposing to assess cC2C Orders a $0.00 per contract transaction fee and to pay a $0.00 per contract rebate.

The Exchange also proposes to adopt certain explanatory text relating to the C2C and cC2C Fee table. The text provides that all fees and rebates are per contract per leg. Also, a C2C Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. A cC2C Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity.

Routing Fees

MIAX Emerald proposes to assess Routing Fees in order to recoup costs incurred by MIAX Emerald when routing orders to various away markets. The amount of the applicable fee, is 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, according to the following table:[56]

[51] *See* Cboe Exchange, Inc. Fees, Pg. 5, QCC Rate Table, Nasdaq ISE, Options 7 Pricing Schedule, Section 6, Other Options Fees and Rebates.

[52] A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretation and Policy .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[53] A C2C Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. *See* the Transaction Fees Section of the Fee Schedule.

[54] A Complex Customer Cross or ''cC2C'' Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). *See* Exchange Rule 518(b)(5).

[55] *See* Exchange Rule 516(i).

[56] This is similar to the methodologies utilized by the Exchange's affiliates, MIAX and MIAX PEARL, and by Cboe BZX Options in assessing Routing Fees. *See* MIAX Fee Schedule, Section (1)(c), Fees for Customer Orders Routed to Another Options Exchange, MIAX PEARL Fee Schedule, Section (1)(b), Fees for Customer Orders Routed to Another Options Exchange, and Cboe BZX Fee Schedule under ''Fee Codes and Associated Fees''.

Description	Fees
Routed, Priority Customer, Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX 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 PEARL	0.65
Routed, Priority Customer, Non-Penny Pilot, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX 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, 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 Options, MIAX PEARL, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot, to: MIAX Options, 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	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

In determining its proposed Routing Fees, the Exchange took 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,[57] 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 affiliates, Miami International Securities Exchange LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''), but is also comparable to the structures in place at other exchanges, such as Cboe BZX Options.[58] The Cboe BZX 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. For example, Cboe BZX fee code RQ covers routed customer orders in Penny classes to NYSE Arca Options, Cboe C2, Nasdaq ISE, Nasdaq GEMX, MIAX PEARL or NOM, with a single fee of $0.85 per contract. The Exchange is proposing a similar structure, however its structure is more granular and thus contains more exchange groupings. The Exchange is proposing to have 8 different exchange groupings, based on the exchange, order type, and option class. The Exchange believes that having more groupings will offer the Exchange to better approximate 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 considered the transaction fees and rebates assessed by away markets, and grouped 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 proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX and MIAX PEARL, those Members which are Members of the Exchange, MIAX, 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 three exchanges for those Members. This proposal is identical to the structure of the routing fee tables of the Exchange's affiliates, MIAX and MIAX PEARL.[59]

Regulatory Fees

Sales Value Fee

The Sales Value Fee[60] is proposed to be assessed by the Exchange to each Member for sales on the Exchange with respect to which the Exchange is obligated to pay a fee to the United States Securities and Exchange Commission (''Commission'') pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. The Section 31 fee rate is set annually by the Commission. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options. The fee is collected indirectly from Members through their clearing firms by the OCC on behalf of MIAX Emerald with respect to option sales and options exercises. The Sales Value fee proposed by the Exchange is identical to the fee assessed by other exchanges, including the Exchange's affiliates MIAX and MIAX PEARL.[61]

Web CRD[62] Fees

Financial Industry Regulatory Authority (''FINRA''), through the Web CRD℠ registration system for the registration of associated persons of Electronic Exchange Member and Market Maker organizations that are not also FINRA members, collects from those MIAX Emerald Members general

[57] 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).

[58] *See supra* note 56.

[59] *See* SR–MIAX–2019–08 and SR–PEARL–2019–06 filed on February 28, 2019 to conform the routing fee structures of MIAX and MIAX PEARL.

[60] *See* Exchange Rule 1207.

[61] *See* MIAX Fee Schedule, Section (2)(a), Sales Value Fee and MIAX PEARL Fee Schedule, Section (2)(a), Sales Value Fee.

[62] FINRA operates the Web Central Registration Depository (CRD®), the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals.

registration fees and fingerprint processing fees. The Fee Schedule sets forth the Web CRD Fees FINRA is currently charging. The Web CRD fees proposed by the Exchange are similar to those assessed by other exchanges and identical to the same fees assessed by MIAX and MIAX PEARL.[63]

Non-Transaction Fees

The Exchange proposes to establish certain non-transaction fees, including membership, testing, system connectivity and market data fees, applicable to Members and non-Members using services provided by MIAX Emerald.

Membership Fees

MIAX Emerald proposes to assess Membership fees for Applications and Trading Permits.

Application for MIAX Emerald Membership

A one-time application fee based upon the applicant's status as either an Electronic Exchange Member (''EEM'') or as a Market Maker will be assessed by MIAX Emerald. The Exchange proposes to assess the one-time application fee on the earlier of (i) the date the applicant is certified in the Exchange's membership system or (ii) once an application for MIAX Emerald membership is finally denied. MIAX Emerald proposes that the one-time application fee for membership will be waived for a period of time, which the Exchange has defined in the Fee Schedule as the Waiver Period,[64] for both EEMs and Market Makers. MIAX Emerald believes that this will provide incentive for potential applicants to submit early applications, which should result in increasing potential order flow and liquidity as MIAX Emerald begins trading. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to expire the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that is currently in place at the Exchange's affiliate, MIAX PEARL.[65]

Trading Permits

MIAX Emerald proposes to issue Trading Permits that confer the ability to transact on MIAX Emerald. Trading Permits will be issued to EEMs and Market Makers. Members receiving Trading Permits during a particular calendar month will be assessed monthly Trading Permit Fees as shall be set forth in the Fee Schedule. The Exchange notes that the Exchange's affiliates, MIAX and MIAX PEARL, charge trading permit fees as well, and the Exchange's proposed structure for its Trading Permit fees is based on the structure of MIAX, particularly as it relates to EEMs.[66] For the calculation of the monthly Trading Permit Fee as it relates to EEMs, Monthly Trading Fees will be assessed with respect to EEMs (other than Clearing Firms) in any month the EEM is certified in the membership system and the EEM is credentialed to use one or more FIX Ports in the production environment. Further, the Exchange proposes that Monthly Trading Permit Fees will be assessed with respect to EEM Clearing Firms in any month the Clearing Firm is certified in the membership system to clear transactions on the Exchange. The Exchange proposes that Monthly Trading Permit Fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX Emerald Express Interface (''MEI'') Ports in the production environment and is assigned to quote in one or more classes.

For the calculation of the monthly Trading Permit Fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange will assess Market Makers the monthly Trading Permit Fee based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. The calculation of the Trading Permit Fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days on which the Trading Permit was in effect divided by the total number of trading days in that month multiplied by the monthly rate.

The monthly Trading Permit Fees assessable to EEMs and Market Makers are being waived by the Exchange for the Waiver Period. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that was previously in place at the Exchange's affiliate, MIAX PEARL.[67]

Testing and Certification Fees

API Testing and Certification Fee for Members

[63] *See* MIAX Fee Schedule, Section (2)(c), Web CRD Fees and MIAX PEARL Fee Schedule, Section (2)(c), Web CRD Fees.

[64] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[65] *See* Securities Exchange Act Release No. 80061(February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX PEARL Fee Schedule). MIAX PEARL introduced the structure of certain non-transaction rebates and fees (without proposing actual fee amounts), but also explicitly waived the assessment of any such fees for the period of time which MIAX PEARL defined as the ''Waiver Period''.

[66] *See* MIAX Fee Schedule, Section (3) (b), Monthly Trading Permit Fee and MIAX PEARL Fee Schedule, Section (3) (b), Monthly Trading Permit Fee.

[67] *See supra* note 65.

MIAX Emerald proposes to assess an Application Programming Interface (''API'') testing and certification fee on all Members depending upon the type of interface being tested. An API makes it possible for Member software to communicate with MIAX Emerald software applications, and is subject to Member testing with, and certification by, MIAX Emerald. The Exchange proposes to offer four types of interfaces: (i) The Financial Information Exchange (''FIX'') Port,[68] which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MEI Port, which allows Market Makers to submit electronic orders and quotes to the Exchange; (iii) the Clearing Trade Drop (''CTD'') Port,[69] which provides real-time trade clearing information to the participants to a trade on MIAX Emerald and to the participants' respective clearing firms; and (iv) FIX Drop Copy (''FXD'') Port [70], which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification Fees will be assessed (i) initially per API for FIX, FXD and CTD in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX Emerald's interfaces. MIAX Emerald has set a one-time fee so that MIAX Emerald Members will know the full cost for the service prior to beginning to use such services and thereby be more cost effective to the Members.

API Testing and Certification Fees for EEM Clearing Firms will be assessed (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD Ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification.

API Testing and Certification Fees for Market Makers will be assessed (i) initially per API for CTD and MEI in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification.

In order to provide an incentive to prospective Members to apply early for membership and to engage in API testing and certification such that they will be able to trade options on MIAX Emerald as soon as possible, API Testing and Certification fees assessable to Members will be waived by the Exchange for all interfaces for the Waiver Period. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that is currently in place at the Exchange's affiliate, MIAX PEARL.[71]

API Testing and Certification Fee for Non-Members

MIAX Emerald proposes to assess a one-time API Testing and Certification fee per interface on third-party vendors, Service Bureaus and other non-Members whose software interfaces with MIAX Emerald software. As with Members, an API makes it possible for the software of third-party vendors, Service Bureaus and other non-Members to communicate with MIAX Emerald software applications, and is subject to testing with, and certification by, MIAX Emerald. API Testing and Certification Fees will be assessed (i) initially per API for FIX, FXD, CTD and MEI in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau or other non-Member initiates a mandatory change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

Other exchanges, including Nasdaq PHLX, LLC and The Nasdaq Stock Market LLC, charge a fee for similar services to Members and non-Members.[72] In order to provide an incentive to non-Members to engage in early API testing and certification such that they will be able to utilize the services of MIAX Emerald as soon as possible, API Testing and Certification fees assessable to non-Members will be waived by the Exchange for all interfaces for the Waiver Period. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that is

[68] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[69] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions Section of the Fee Schedule.

[70] ''FXD Port'' or ''FIX Drop Copy Port'' means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM.

[71] *See supra* note 65.

[72] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 9, Other Member Fees, E. Testing Facilities.

currently in place at the Exchange's affiliate, MIAX PEARL.[73]

Member Network Testing and Certification Fee

MIAX Emerald will establish electronic communication connections with Individual Firms and proposes to assess Individual Firms a Testing and Certification Fee for network connectivity. Member Network Connectivity Testing and Certification Fees will be assessed (i) initially per connection in the month the Individual Firm has been credentialed to use any API or Market Data feeds in the production environment utilizing the tested network connection, and (ii) each time an Individual Firm initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The Exchange notes that the Emerald Express Network Interconnect (''EENI'')[74] is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the Exchange. When utilizing a Shared[75] cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated[76] cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of the Exchange. The EENI consists of the low latency and ultra-low latency (''ULL'') connectivity options set forth in the Exchange's Fee Schedule. Accordingly, Members utilizing Shared cross-connects to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL will only be assessed one Network Connectivity Testing and Certification Fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange notes that it has submitted a separate rule filing to the Commission to establish the fee amounts and related requirements related to connectivity for Members to the Exchange's primary/secondary facility.[77]

In order to provide an incentive to Individual Firms to engage in early network connectivity testing and certification, such that they will be able to utilize the services of MIAX Emerald as soon as possible, Network Connectivity Testing and Certification fees assessable to Individual Firms will be waived by the Exchange for the Waiver Period. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that was previously in place at the Exchange's affiliate, MIAX PEARL.[78]

Non-Member Network Testing and Certification Fee

MIAX Emerald will establish electronic connections with and proposes to assess Service Bureaus, Extranet Providers and other non-Members a Testing and Certification Fee for network connectivity.

Non-Member Network Connectivity Testing and Certification Fees will be assessed (i) initially per connection in the month the Service Bureau, Extranet Provider or other non-Member has been credentialed to use any API or Market Data feeds in the production environment using the tested network connection, and (ii) each time Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification.

Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Non-Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The EENI is also available to non-Member subscribers. For non-Member subscribers, when utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of the Exchange. The EENI consists of the low latency and ULL connectivity options set forth in the Exchange's Fee Schedule. Accordingly, non-Members utilizing Shared cross-connects to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL will only be assessed one Network Connectivity Testing and Certification Fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Exchange notes that it has submitted a separate rule filing to the Commission to establish the fee amounts and related requirements

[73] *See supra* note 65.

[74] ''EENI'' means the Emerald Express Network Interconnect, which is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX Emerald. When utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of MIAX Emerald. The EENI consists of the low latency and ultra-low latency (''ULL'') connectivity options set forth in the Exchange's Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[75] ''Shared'' (cross-connect) means cross-connect that provides network connectivity to the trading platforms, market data systems, test systems, and/or disaster recovery facilities of MIAX Emerald, MIAX and MIAX PEARL via a single, shared connection. The following connections can be Shared across MIAX Emerald, MIAX and MIAX PEARL: 1 Gigabit, 1 Gigabit Disaster Recovery, and 10 Gigabit Disaster Recovery. *See* the Definitions Section of the Fee Schedule.

[76] ''Dedicated'' (cross-connect) means cross-connect that provides network connectivity solely to the trading platforms, market data systems, and test systems of MIAX Emerald. The following connection is Dedicated to MIAX Emerald: 10 Gigabit ULL. *See* the Definitions Section of the Fee Schedule.

[77] *See* Securities Exchange Act Release No. 85316 (March 14, 2019), SR–EMERALD–2019–11 (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt System Connectivity Fees).

[78] *See supra* note 65.

related to connectivity for Members to the Exchange's primary/secondary facility.[79]

The Member and non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic connections with MIAX Emerald.

In order to provide an incentive to Service Bureau, Extranet Provider or other non-Members to engage in early network connectivity testing and certification such that they will be able to utilize the services of MIAX Emerald as soon as possible, Network Connectivity Testing and Certification fees assessable to Service Bureau, Extranet Provider or other non-Members will be waived by the Exchange for the Waiver Period. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that was previously in place at the Exchange's affiliate, MIAX PEARL.[80]

Pass-Through of External Connectivity Fees

MIAX Emerald proposes to assess External Connectivity fees to Members and non-Members that establish connections with MIAX Emerald through a third-party. Fees charged to MIAX Emerald by third-party external vendors on behalf of a Member or non-Member connecting to MIAX Emerald (including cross-connects), will be passed through to the Member or non-Member. External Connectivity fees include one-time set-up fees, monthly charges, and other fees charged to MIAX Emerald by a third-party for the benefit of a Member or non-Member.

The purpose of the External Connectivity fee is to recoup costs incurred by MIAX Emerald in establishing connectivity with external vendors acting on behalf of a Member or non-Member. MIAX Emerald will only pass-through the actual costs it is charged by the third-party external vendors. Other exchanges, including MIAX, charge a fee for similar services to Members and non-Members.[81]

Port Fees

Once network connectivity is established, MIAX Emerald proposes to assess fees for access and services used by Members and non-Members via connections known as ''Port.'' These proposed fees are similar to the fees charged by other exchanges, including MIAX.[82] MIAX Emerald provides four (4) Port types, including (i) the FIX Port, which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MEI Port, which allows Market Makers to submit electronic orders and quotes to the Exchange; (iii) the CTD Port, which provides real-time trade clearing information to the participants to a trade on MIAX Emerald and to the participants' respective clearing firms; and (iv) the FXD Port, which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

MIAX Emerald will assess monthly Port Fees on Members and non-Members in each month the market participant is credentialed to use a Port in the production environment and based upon the number of credentialed Ports that a user is entitled to use. MIAX Emerald has Primary and Secondary Facilities and a Disaster Recovery Facility. Each type of Port provides access to all three facilities for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port Fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port.

In order to provide an incentive to Members and non-Members to connect to MIAX Emerald through the Ports such that they will be able to utilize the services of MIAX Emerald as soon as possible, all Port Fees (except for one) assessable to Port users will be waived by the Exchange for the Waiver Period for such fees. The one Port Fee that the Exchange does not propose to waive is the Limited Service MEI Ports beyond the two (2) Limited Service MEI Ports per Matching Engine to which they connect, allocated to MEI Port users (the ''Additional Limited Service MEI Port Fee''). Specifically, the Exchange notes that the MIAX Emerald Market Makers may request Additional Limited Service MEI Ports for which MIAX Emerald will assess MIAX Emerald Market Makers $50 per month per Additional Limited Service MEI Port for each Matching Engine, as discussed below. Market Makers are limited to six Additional Limited Service MEI Ports per Matching Engine, for a total of eight per Matching Engine. For all other waived Port Fees, the Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive most of these fees during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive most of these fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that was previously in place at the Exchange's affiliate, MIAX PEARL.[83]

FIX Port Fees

The Exchange is proposing to structure its FIX Port as a monthly fixed amount based on the number of credentialed FIX Ports, not tied to transacted volume of the Member. Although one FIX Port gives access to all products traded on MIAX Emerald, some Members may choose to use more than one FIX Port. A FIX Port is an interface with MIAX Emerald systems that enables the Port user to submit orders electronically to MIAX Emerald. MIAX Emerald will assess monthly FIX Port on Members in each month the Member is credentialed to use a FIX Port in the production environment and based upon the number of credentialed FIX Ports.

[79] *See supra* note 77.

[80] *See supra* note 65.

[81] *See* MIAX Fee Schedule, Section (5)(c), Pass-Through of External Connectivity Fees.

[82] *See* MIAX Fee Schedule, Section (5)(d), Port Fees.

[83] *See supra* note 65.

MEI Port Fees

MIAX Emerald will offer different options of MEI Ports depending on the services required by Market Makers. MIAX Emerald will assess monthly MEI Port Fees on Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [84] and two (2) Limited Service MEI Ports [85] per Matching Engine to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center.

For the calculation of the monthly MEI Port Fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.[86] Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.

The Exchange proposes to assess Market Makers the monthly MEI Port Fees based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

MEI Port users will be allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per Matching Engine to which they connect. MEI Port Fees include MEI Ports at the Primary, Secondary and Disaster Recovery data centers. MIAX Emerald Market Makers may request additional Limited Service MEI Ports for which MIAX Emerald will assess MIAX Emerald Market Makers $50 per month per additional Limited Service MEI Port for each Matching Engine. Market Makers are limited to six additional Limited Service MEI Ports per Matching Engine, for a total of eight per Matching Engine.

A MIAX Emerald Market Maker may request and be allocated two (2) Purge Ports per Matching Engine to which it connects. For each month in which the MIAX Emerald Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange will assess the MIAX Emerald Market Maker a flat fee which will be waived for the Waiver Period, regardless of the number of Purge Ports allocated to the MIAX Emerald Market Maker.

Clearing Trade Drop Port Fee

The Exchange is proposing to structure its CTD Port as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to the proposed CTD Port Fees.[87] CTD provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port will be assessed in any month the Member is credentialed to use the CTD Port in the production environment.

FIX Drop Copy Port Fees

The Exchange is proposing to structure its FXD Port Fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to FXD Port Fees.[88] FXD is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment.

MPID Fees

MIAX Emerald proposes to assess monthly MPID fees on EEMs based upon the number of MPIDs assigned to a particular EEM in a given month in each month the Member is credentialed to use such MPIDs in the production environment. MIAX Emerald intends to assess MPID fees in order to cover the administrative costs it incurs in assigning and managing these identifiers for each EEM.

In order to provide an incentive to Members to start trading on MIAX Emerald as soon as possible, all MPID fees assessable to EEMs will be waived by the Exchange for the Waiver Period for such fees. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that is currently in place at the Exchange's affiliate, MIAX PEARL.[89]

Technical Support Request Fee

MIAX Emerald proposes to assess a technical support request fee to both Members and non-Members that request MIAX Emerald technical support at any of the MIAX Emerald data centers. MIAX Emerald proposes that such fee

[84] Full Service MEI Ports means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[85] Limited Service MEI Ports means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[86] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port Fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX in the prior calendar quarter].

[87] *See* Nasdaq PHLX Pricing Schedule, Options 7, Section 9, Other Member Fees, B. Port Fees.

[88] *Id.*

[89] *See supra* note 65.

will be $200 per hour for such technical support. The purpose of the proposed fee is to permit users to request the use of Exchange's on-site data center personnel as technical support as a convenience to the users to test or otherwise assess the user's connectivity to the Exchange. Other exchanges, including MIAX and MIAX PEARL, charge a fee for similar services to Members and non-Members.[90]

Market Data Fees

The Exchange proposes to assess fees for its market data products, MIAX Emerald Top of Market (''ToM'')[91] and Complex Top of Market (''cToM'')[92]; Administrative Information Subscriber (''AIS'')[93]; and MIAX Order Feed (''MOR'').[94] The Exchange notes that it has separately filed with the Commission a proposed rule change to establish the ToM, cToM, AIS, and MOR products (the ''Market Data Product Filing'').[95] More information about the ToM, cToM, AIS, and MOR products can be found in the Market Data Product Filing.

To summarize, ToM provides market participants with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority (''OPRA''). ToM will also contain a feature that provides the number of Priority Customer contracts that are included in the size associated with the Exchange's best bid and offer.

cToM will provide subscribers with the same information as the ToM market data product as it relates to the strategy book, *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. cToM will also provide subscribers with the identification of the complex strategies currently trading on MIAX Emerald; complex strategy last sale information; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is distinct from ToM, and anyone wishing to receive cToM data must subscribe to cToM regardless of whether they are a current ToM subscriber. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

AIS provides market participants with a direct data feed that allows subscribers to receive real-time updates of products traded on MIAX Emerald, trading status for MIAX Emerald and products traded on MIAX Emerald, and liquidity seeking event notifications. The AIS market data feed includes opening imbalance condition information, opening routing information, expanded quote range information, post-halt notifications, and liquidity refresh condition information. AIS real-time messages are disseminated over multicast to achieve a fair delivery mechanism. AIS notifications provide current electronic system status allowing subscribers to take necessary actions immediately.

MOR provides market participants with a direct data feed that allows subscribers to receive real-time updates of options orders, products traded on MIAX Emerald, MIAX Emerald Options System status, and MIAX Emerald Options Underlying trading status. Subscribers to the data feed will get a list of all options symbols and strategies that will be traded and sourced on that feed at the start of every session.

The Exchange proposes to charge monthly fees to Distributors of the ToM, cToM, AIS, and MOR market data products. MIAX Emerald will assess market data fees applicable to the market data products on Internal and External Distributors in each month the Distributor is credentialed to use the applicable market data product in the production environment. A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. Market data fees for ToM, cToM, AIS, and MOR will be reduced for new Distributors for the first month during which they subscribe to the applicable market data product, based on the number of trading days that have been held during the month prior to the date on which they have been credentialed to use the applicable market data product in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use the applicable market data product in the production environment, divided by the total number of trading days in the affected calendar month.

Other exchanges, including MIAX and MIAX PEARL, charge fees for market data products to Members and non-Members. In order to provide an incentive to Members and non-Members to receive the market data feeds as soon as possible, all market data fees assessable to Distributors for ToM, cToM, AIS, and MOR will be waived by the Exchange for the Waiver Period for such fees. The Exchange will submit a rule filing to the Commission to establish the fee amount and any related requirements, and provide notice to terminate the applicable Waiver Period. Even though the Exchange is proposing to waive this particular fee during the Waiver Period, the Exchange believes that is appropriate to provide market participants with the overall structure of the fee by outlining the structure on the Fee Schedule without setting forth a specific fee amount, so that there is general awareness that the Exchange intends to assess such a fee in the future, should the Waiver Period terminate and the Exchange establish an applicable fee. The Exchange believes that its proposal to waive this fee under this waiver structure is reasonable because this waiver structure is identical to the waiver structure that is currently in place at the Exchange's affiliate, MIAX PEARL.[96]

The Exchange does not propose to adopt any other fees at this time. The Exchange expects to adopt additional fees after the terminations of applicable Waiver Periods as determined by the Exchange, which shall be at a later date. The Exchange will submit rule filings with the Commission prior to any such fees becoming effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is

[90] *See* MIAX Fee Schedule, Section 5) f), Member and non-Member Technical Support Request Fee and MIAX PEARL Fee Schedule, Section 5) f), Member and non-Member Technical Support Request Fee.

[91] *See* Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR–MIAX–2013–05).

[92] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171(October 28, 2016)(SR–MIAX–2016–36)

[93] *See* Securities Exchange Act Release Nos. 69320 (April 5, 2013), 78 FR 21661 (April 11, 2013) (SR–MIAX–2013–13); 82740 (February 20, 2018), 83 FR 8304 (February 26, 2018) (SR–MIAX–2018–04).

[94] *See* Securities Exchange Act Release No. 74759 (April 17, 2015), 80 FR 22749 (April 23, 2015) (SR–MIAX–2015–28).

[95] *See* Securities Exchange Act Release No. 85207 (February 27, 2019, 84 FR 7963 (March 5, 2019)) (SR-Emerald-2019–09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish MIAX Emerald Top of Market (''ToM'') Data Feed, MIAX Emerald Complex Top of Market (''cToM'') Data Feed, MIAX Emerald Administrative Information Subscriber (''AIS'') Data Feed, and MIAX Emerald Order Feed (''MOR'').

[96] *See supra* note 65.

consistent with Section 6(b) of the Act[97] in general, and furthers the objectives of Section 6(b)(4) of the Act[98] in particular, in that it is an equitable allocation of reasonable 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 Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Transaction Fees

Add/Remove Tiered Exchange Rebates/Fees

The Exchange believes the rebates and fees proposed for transactions on MIAX Emerald are reasonable, equitable and not unfairly discriminatory. MIAX Emerald operates within a highly competitive market in which market participants can readily send order flow to several other competing venues if, among other things, they deem fees at a particular venue to be unreasonable or excessive. The proposed fee structure is intended to attract order flow to MIAX Emerald by offering market participants incentives to submit their orders or quotes to MIAX Emerald.

Tiers and Their Application

The Exchange believes that its proposed methodology for calculating its tiers is reasonable, equitable, and not unfairly discriminatory, as this methodology is similar to how another exchange calculates its tiers. The Exchange's methodology, which analyzes three alternative calculation methods and then selects the method that is the highest tier reached to the Member, is similar to how GEMX calculates its tiers.[99] For example, GEMX has four qualifying tiers, the same number that the Exchange is proposing. GEMX calculates its tiers using CTCV (Customer Total Consolidated Volume) at the OCC, which is fundamentally the same denominator method that the Exchange is proposing. GEMX aggregates volume of affiliated members, as the Exchange is also proposing. GEMX has two alternative calculation methods, however the Exchange is proposing three alternative calculation methods, which the Exchange believes provides greater benefit to Members, as there is an additional method to enable qualification for a higher tier. For GEMX, for certain of its tiers, offers a calculation that looks at absolute ADV volume (*i.e.* 20,000 ADV), in addition to, or in lieu of, percentages of CTCV, whereas the Exchange is proposing to only look at monthly percentages of CTCV. The Exchange's proposed methodology for calculating its tiers is reasonable, equitable, and not unfairly discriminatory because it applies equally to all Members. Volume-based pricing models such as those proposed on the Exchange have been widely adopted by options exchanges and are equitable and not unfairly discriminatory because they are open to all Members and provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange's proposal to offer a rebate or lower fee to Makers that provide liquidity in Penny and Non-Penny classes is also equitable and not unfairly discriminatory under the Act. The Exchange believes that the proposed maker-taker model is an important competitive tool for exchanges and directly or indirectly can provide better prices for investors. The proposed fee structure may incentivize the MIAX Emerald bid and offer because the rebate or lower fee assessable to Makers effectively subsidizes, and thus encourages, the posting of liquidity. The Exchange believes that the Maker rebate or lower Maker fee will also provide MIAX Emerald Market Makers with greater incentive to either match or improve upon the best price displayed on MIAX Emerald, all to the benefit of investors and the public in the form of improved execution prices.

Priority Customers

The Exchange believes the proposed Tiered rebates and fees assessed on Priority Customers are reasonable, equitable, and not unfairly discriminatory because they are, as detailed in the Purpose section above, comparable to fees that Priority Customers are assessed at other competing exchanges.[100] The Exchange believes charging lower fees and providing higher rebates to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders than for orders for Origins other than Priority Customer. The Exchange believes assesses Priority Customers lower or no transaction fees is equitable not unfairly discriminatory because market participants generally seek to trade with Priority Customer order flow, which in turn enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Non-Priority Customers, Non-MIAX Emerald Market Makers, Firm Proprietary, and Broker-Dealers, who will generally submit a higher number of orders than Priority Customers.

MIAX Emerald Market Makers

The Exchange believes that its proposed Tiered transaction rebates and fees for MIAX Emerald Market Makers are reasonable, equitable, and not unfairly discriminatory because they are available to all MIAX Emerald Market Makers and are reasonably related to the value to the Exchange that comes with higher market quality and higher levels of liquidity in the price and volume discovery processes. Such increased liquidity at the Exchange should allow it to spread its administrative and infrastructure costs over a greater number of transactions leading to lower costs per transaction.

The Exchange believes it is equitable and not unfairly discriminatory for MIAX Emerald Market Makers to be assessed generally lower fees or higher rebates than other professional market participants (such as non-Priority Customers, Broker-Dealers, Non-MIAX Emerald Market Makers and Firm Proprietary). MIAX Emerald Market Makers have obligations that other professional market participants do not. In particular, they must maintain continuous two-sided markets in the classes in which they are registered to trade, and must meet certain minimum quoting requirements. Therefore, the Exchange believes it is appropriate that MIAX Emerald Market Makers be assessed lower fees or higher rebates

[97] 15 U.S.C. 78f(b).

[98] 15 U.S.C. 78f(b)(4) and (5).

[99] *See* Nasdaq GEMX, Options 7 Pricing Schedule.

[100] *See supra* notes 16 and 22.

since they have the potential to provide greater volumes of liquidity to the market.

Non-MIAX Emerald Market Makers

The Exchange believes the proposed Tiered rebates and fees assessed on Non-MIAX Emerald Market Makers are reasonable, equitable, and not unfairly discriminatory because they are, as detailed in the Purpose section above, comparable to fees that non-market makers are assessed at other competing exchanges.[101] The tiered rebates/fees assessable to Non-MIAX Emerald Market Makers proposed by the Exchange for simple orders are also similar in structure to and in the range of the transaction rebates and fees charged by GEMX for transactions for the accounts of ''Non-Nasdaq GEMX Market Makers (FarMM).'' The fees proposed by the Exchange for Non-MIAX Emerald Market Maker complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE to a ''Non-Nasdaq ISE Market Maker (FarMM)'' for complex transactions in Nasdaq ISE Select Symbols. The fees proposed by the Exchange for Non-MIAX Emerald Market Maker transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Non-Nasdaq GEMX Market Makers (FarMM) for orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. Finally, the rebates and fees for Non-MIAX Emerald Market Makers are the same amounts as the rebates and fees assessed by the Exchange on other professional Origins (Firm Proprietary/Broker-Dealer, Non-Priority Customer), with only minor differences in the highest Tiers for certain simple Taker fees.

Firm Proprietary/Broker-Dealers

The Exchange believes the proposed Tiered rebates and fees assessed on Firm Proprietary/Broker-Dealers are reasonable, equitable, and not unfairly discriminatory because they are, as detailed in the Purpose section above, comparable to fees that orders for Firm Proprietary/Broker-Dealers are assessed at other competing exchanges. The tiered rebates/fees assessable to Firm Proprietary or Broker-Dealers, proposed by the Exchange for simple orders are also similar in structure to and in the range of the transaction rebates and fees charged by GEMX for transactions for the accounts of ''Firm Proprietary/Broker-Dealer.'' The fees proposed by the Exchange for Firm Proprietary/Broker-Dealer complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE to ''Firm Proprietary/Broker-Dealer'' order for complex transactions in Nasdaq ISE Select Symbols. The fees proposed by the Exchange for Firm Proprietary/Broker-Dealer transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Firm Proprietary/Broker-Dealer orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. Finally, the rebates and fees for Firm Proprietary/Broker-Dealers are the same amounts as the rebates and fees assessed by the Exchange on other professional Origins (Non-MIAX Emerald Market Makers, Non-Priority Customer), with only minor differences in the highest Tiers for certain simple Taker fees.

Non-Priority Customers

The Exchange believes the proposed Tiered rebates and fees assessed on Non-Priority Customers are reasonable, equitable, and not unfairly discriminatory because they are, as detailed in the Purpose section above, comparable to fees that Non-Priority Customers are assessed at other competing exchanges. The tiered rebates/fees assessable to Non-Priority Customers proposed by the Exchange are also similar in structure to and in the range of the transaction rebates and fees for simple orders charged by GEMX for transactions for the accounts of ''Professional Customers.'' The fees proposed by the Exchange for Non-Priority Customer complex transactions in Penny classes are also similar to those fees charged by Nasdaq ISE for ''Professional Customers'' for complex transactions in Nasdaq ISE Select Symbols. The fees proposed by the Exchange for Non-Priority Customer transactions in a PRIME/cPRIME auction are also similar to those assessed by GEMX for transactions on behalf of its Professional Customer orders executed in a GEMX PIM auction in both Penny and Non-Penny classes. Finally, the rebates and fees for Non-Priority Customers are the same amounts as the rebates and fees assessed by the Exchange on other professional Origins (Non-MIAX Emerald Market Makers, Firm Proprietary/Broker-Dealer), with only minor differences in the highest Tiers for certain simple Taker fees.

Penny and Non-Penny Classes

The Exchange believes that establishing different pricing for options in Penny classes and Non-Penny classes is reasonable, equitable, and not unfairly discriminatory because options in Penny classes are generally more liquid as compared to Non-Penny classes. Additionally, other competing options exchanges differentiate pricing in a similar manner.[102]

Complex Transactions

The Exchange believes that the proposed rebates and fees for complex orders is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants are subject to the same fee and rebate structure for complex order transactions, and access to the Exchange is offered on terms that are not unfairly discriminatory. With the exception of Priority Customer Origins which receive higher rebates and lower fees, all other professional Origins (Non-Emerald Market Maker, Firm Proprietary/Broker-Dealer, Non-Priority Customer) are assessed the same rebate and fee amounts. MIAX Emerald Market Makers are also assessed higher rebates and lower fees than those professionals in certain Tiers, however MIAX Emerald Market Makers have additional obligations discussed above that warrant such differences. The Exchange believes that the proposed tiered fee structure for maker rebates and fees and taker rebates and fees for complex orders, carving out orders that are contra to Priority Customer Origin is reasonable, equitable and not unfairly discriminatory because the structure is consistent with other options markets that also assess different transaction fees depending on the contra Origin.[103] Additionally, the Exchange believes the structure is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered rebates and fees and access to the Exchange is offered on terms that are not unfairly discriminatory.

PRIME/cPRIME

The Exchange believes that the proposed fee structure for PRIME/cPRIME Auction transaction fees and rebates is reasonable, equitable, and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to send simple and complex order flow to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market

[101] *See supra* notes 16 and 22.

[102] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 4, Section II; NYSE American Options Fee Schedule, Section 1; Cboe Exchange, Inc., Fee Schedule, p. 1.

[103] *See supra* note 22.

participants. PRIME/cPRIME Auctions and the corresponding fees are also reasonably designed because they are within the range of fees and rebates assessed by other exchanges employing similar fee structures for complex orders submitted and executed in a price improvement mechanism. Other competing exchanges offer different fees and rebates for complex agency orders, contra-side orders, and responders to an auction in a manner similar to the proposal. Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for Priority Customers versus Origins other than Priority Customer in a manner similar to the proposal.

The PRIME and cPRIME fee and rebate structure is reasonable, equitable, and not unfairly discriminatory because it will apply equally to Priority Customer orders, Market Maker orders, Non-MIAX Emerald Market Maker orders, Broker-Dealer orders, Firm Proprietary orders, and Non-Priority Customers, in each respective category of PRIME and cPRIME orders. All similarly situated categories of participants are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. The PRIME and cPRIME fee and rebate structure is reasonably designed because it is intended to incentivize market participants to send complex orders to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

QCC Orders

The Exchange believes the proposed transaction fees for QCC orders is reasonable because the proposed amount is in line with the amount assessed at other Exchanges for similar transactions.[104] Additionally, the proposed fees would be charged to all Origins except Priority Customer. Assessing QCC rates to all market participants except Priority Customers is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. By assessing a $0.00 fee for Priority Customer orders, the QCC transaction fees will not discourage the sending of Priority Customer orders.

The Exchange believes the proposed rebate for the initiating order side of a QCC transaction is reasonable because other competing exchanges also provide a rebate on the initiating order side. Additionally, the proposed rebate amount is within the range of the rebate amounts at the other competing exchanges.[105] The Exchange believes the proposed rebate is equitable and not unfairly discriminatory because it applies to all Members that enter the initiating order (except for when both the initiator and contra-side orders are Priority Customers) and because it is intended to incentivize the sending of more QCC Orders to the Exchange. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to not provide a rebate for the initiating order for QCC transactions for which both the initiator and the contra-side are Priority Customers since Priority Customers are already incentivized by a reduced fee for submitting QCC Orders.

cQCC Fees

The Exchange believes the proposed transaction fees for cQCC orders are reasonable because the proposed amounts are identical to the proposed fees for QCC transactions and are in line with the amounts assessed at other Exchanges for similar transactions.[106] Additionally, the proposed fees would be assessed to all Origins except Priority Customer.

The Exchange believes the proposed rebate for the initiating order side of a cQCC transaction is reasonable because other competing exchanges also provide a rebate on the initiating order side.[107] Additionally, the proposed rebate amount is within the range of the rebate amounts at the other competing exchanges.[108] The Exchange believes the proposed rebate is equitable and not unfairly discriminatory because it applies to all Members that enter the initiating order (except for when both the initiator and contra-side orders are Priority Customers) and because it is intended to incentivize the sending of cQCC Orders to the Exchange. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to not provide a rebate for the initiating order for cQCC transactions for which both the initiator and the contra-side orders are Priority Customers since Priority Customers are already incentivized by a reduced fee for submitting cQCC Orders.

C2C and cC2C Fees

The Exchange believes that adding the C2C fee to the Fee Schedule is reasonable, equitable, and not unfairly discriminatory because it clarifies that there is no fee applicable for these orders which are comprised solely of Priority Customer orders. The Exchange believes that it will make it more transparent as to how the Exchange assesses such fee and avoid any confusion as to how such fee is assessed for simple (C2C) and complex (cC2C) orders. The Exchange believes that the proposed transaction fee for cC2C Orders is reasonable because the proposed amount is identical to the fee assessed for C2C transactions, which is currently $0.00. The proposed fees would be charged to all Priority Customers alike and the Exchange believes that assessing a $0.00 fee to Priority Customers is equitable and not unfairly discriminatory. By assessing a $0.00 fee to Priority Customer orders, the C2C and cC2C transaction fees will not discourage the sending of Priority Customer orders.

Routing Fees

The Exchange believes that the proposed Routing Fees are reasonable, equitable and not unfairly

[104] *See supra* note 51.

[105] *See id.*

[106] *See* BOX Options Market LLC (''BOX'') Fee Schedule, Section I(D) (BOX does not charge Public Customers but charges Professional Customers, Broker-Dealers and Market Makers $0.17 per contract on both Agency and Contra Orders); *see also* Cboe Exchange, Inc. (''Cboe'') Fee Schedule, ''QCC Rate Table,'' Page 5 (Cboe charges non-Public Customers $0.17 per contract and does not charge Public Customers); *see also* NYSE American Options Fee Schedule, Section I.F (NYSE American charges Non-Customers $0.20 per contract, Specialists and e-Specialists $0.13 per contract, and does not charge Customer and Professional Customers).

[107] *See* BOX Fee Schedule, Section I(D)(1); *see also* Cboe Fee Schedule, ''QCC Rate Table,'' Page 5; *see also* NYSE American Options Fee Schedule, Section I.F; *see also* Nasdaq ISE Pricing Schedule, Options 7, Section 6, Other Options Fees and Rebate, A. QCC and Solicitation Rebate.

[108] *See* BOX Fee Schedule, Section I(D)(1) (a $0.14 per contract rebate will be applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer); *see also* Cboe Fee Schedule, ''QCC Rate Table,'' Page 5 (a $0.10 per contract credit will be delivered to the TPH Firm that enters the order into Cboe Command but will only be paid on the initiating side of the QCC transaction); *see also* NYSE American Options Fee Schedule, Section I.F (a $0.07 credit is applied to Floor Brokers executing 300,000 or fewer contracts in a month and a $0.10 credit is applied to Floor Brokers executing more than 300,000 contracts in a month); *see also* Nasdaq ISE Pricing Schedule, Options 7, Section 6, Other Options Fees and Rebate, A. QCC and Solicitation Rebate (rebates range from $0.00 to $0.11 per contract).

discriminatory because they seek to recoup costs incurred by MIAX Emerald when routing orders to various away markets. In determining its proposed Routing Fees, the Exchange took 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,[109] 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 affiliates, MIAX and MIAX PEARL, but is also comparable to the structures in place at other exchanges, such as Cboe BZX Options.[110] The Exchange believes that having 8 groupings for its proposed routing fees is reasonable, equitable and not unfairly discriminatory because the Exchange will be able to better approximate 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. The Exchange notes that in determining the appropriate groupings, the Exchange considered the transaction fees and rebates assessed by away markets, and grouped 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 proposed Routing Fees table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX and MIAX PEARL, those Members which are Members of the Exchange, MIAX, 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 three exchanges for those Members. This proposal is identical to the routing fee tables of the Exchange's affiliates, MIAX and MIAX PEARL.[111]

Regulatory Fees

Sales Value Fee

The assessment by the Exchange of the proposed Sales Value Fee is reasonable, equitable and not unfairly discriminatory since it allows the Exchange to offset the cost it incurs in payment to the Commission of a transaction fee that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The amount of the fee is the same amount assessed to the Exchange pursuant to Section 31 of the Exchange Act. The Exchange believes it is reasonable to recover the actual costs associated with the payment of Section 31 fees and other exchanges, including MIAX, charge the same fee to their market participants.

Web CRD Fees

The Exchange believes it is reasonable, equitable and not unfairly discriminatory for the proposed FINRA fees to be included on the Fee Schedule because these fees are not being assessed or set by MIAX Emerald, but by FINRA, and will be assessed to broker-dealers that register associated persons through FINRA's Web CRD system, and other exchanges, including MIAX, charge the same fees to their market participants.

Non-Transaction Fees

Membership Fees

The Exchange believes that the assessment of one-time Membership Application fees is reasonable, equitable and not unfairly discriminatory. As described in the Purpose section, the one-time application fees are charged by other options exchanges, including MIAX and MIAX PEARL, and are designed to recover costs associated with the processing of such applications. MIAX Emerald believes it is reasonable and equitable to waive the fee to applicants who apply for membership during the Waiver Period since the waiver of such fees provides incentives to interested applicants to apply early for MIAX Emerald membership. This in turn provides MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver will apply equally to all applicants during the Waiver Period for the membership application fee.

Trading Permit Fees

The Exchange believes that the assessment of Trading Permit fees is reasonable, equitable and not unfairly discriminatory. The assessment of Trading Permit fees is done by the Exchange's affiliates, MIAX and MIAX PEARL, and is commonly done by other exchanges as described in the Purpose section above. MIAX Emerald believes it is reasonable and equitable to waive the fee to Members during the Waiver Period since the waiver of such fees provides incentives to interested Members to apply early for trading permits. This in turn provides MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver of the Trading Permit fees will apply equally to all Members during the Waiver Period.

API and Network Testing and Certification Fees

MIAX Emerald believes that the assessment of API and Network Testing and Certification fees is a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering the costs associated with providing such infrastructure testing and certification services. Other exchanges, including MIAX and MIAX PEARL, charge a fee for similar services to Members and non-Members.

MIAX Emerald believes it is reasonable and equitable to waive the API Testing and Certification fee assessable to Members and non-Members during the Waiver Period since the waiver of such fees provides incentives to interested Members and non-Members to test their APIs early. Determining system operability with the Exchange's system early will in turn provide MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver of API Testing and Certification fees will apply equally to all Members and non-Members during the Waiver Period.

Additionally, MIAX Emerald believes it is reasonable, equitable and not unfairly discriminatory to assess different Network Testing and Certification fees to Members and non-Members. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process.

System Connectivity Fees

The Exchange believes that the proposed pass-through of external connectivity fees and Port Fees constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections and access and services through the Ports, responding to customer requests, configuring MIAX

[109] *See supra* note 57.

[110] *See supra* note 56.

[111] *See supra* note 59.

Emerald systems, programming API user specifications and administering the various services. Access to the MIAX Emerald market is offered on fair and non-discriminatory terms.

MIAX Emerald believes it is reasonable, equitable and not unfairly discriminatory to pass-through External Connectivity fees to Members and non-Members that establish connections with MIAX Emerald through a third-party. MIAX Emerald will only pass-through the actual costs it is charged by third-party external vendors. MIAX Emerald believes it is reasonable and equitable to recover costs charged it on behalf of a Member or non-Member that establishes connections with MIAX Emerald through a third party. Other exchanges, including MIAX, charge a fee for similar services to Members and non-Members.

MIAX Emerald believes it is reasonable, equitable and not unfairly discriminatory to assess Port Fees on both Members and non-Members who use such services. In particular, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Port Fees on Members since the Ports enable Members to submit orders and to receive information regarding transactions. Specifically, the FIX Port, MEI Port, CTD Port and FXD Port enable Members to submit orders electronically to the Exchange for processing. The Exchange believes that its proposed fees are reasonable in that other exchanges offer similar ports with similar services and charge fees for the use of such ports, including MIAX.

MIAX Emerald believes it is reasonable and equitable to waive most of the Port Fees assessable to Members and non-Members during the Waiver Period since the waiver of such fees provides incentives to Members and non-Members to connect to the Ports early. Determining connectivity and system operability with the Exchange's system early will in turn provide MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver of most of the Port Fees will apply equally to all Members and non-Members during the Waiver Period. The sole Port Fee that is not waived is the Additional Limited Service MEI Ports Fee. The Exchange believes it is reasonable to exclude this fee from the Waiver Period in order to ensure that Members and non-Members do not request an excessive number of Additional Limited Service MEI Ports, since there is no fee associated with such Ports.

MIAX Emerald believes that its fees for MPIDs are reasonable, equitable and not unfairly discriminatory in that they apply to all EEMs equally and allow the Exchange to recover operational and administrative costs in assigning and maintaining such services based on the number of MPIDs assigned to the particular EEM in a given month in each month the Member is credentialed to use such MPIDs in the production environment. The Exchange believes that its proposed fees are reasonable in that other exchanges charge fees for similar services, including MIAX.

MIAX Emerald believes it is reasonable and equitable to waive the MPID fee to EEMs during the Waiver Period since the waiver of such fees provides incentives to Members to apply early. This in turn provides MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver of the MPID fees will apply equally to all Members during the Waiver Period.

The Exchange believes that the proposed Technical Support fee is fair, equitable and not unreasonably discriminatory, because it is assessed equally to all Members and non-Members who request technical support. Furthermore, Members and non-Members are not required to use the service but instead it is offered as a convenience to all Members and non-Members. The proposed fee is reasonably designed because it will permit both Members and non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience in order to test or otherwise assess the User's connectivity to the Exchange and the fee is within the range of the fee charged by other exchanges for similar services and is identical to the same fee assessed by MIAX and MIAX PEARL.

Market Data Fees

The Exchange believes that its proposal to assess market data fees is consistent with the provisions of Section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable fees among distributors of ToM, cToM, AIS and MOR, because all Distributors in each of the respective category of Distributor (*i.e.,* Internal and External) will be assessed the same fees as other Distributors in their category for the applicable market data product.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data. [112]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The Exchange believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for

[112] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. MIAX Emerald believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces. The Exchange therefore believes that the assessment of fees for the use of ToM, cToM, AIS and MOR is proper for all Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system. [113]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

MIAX Emerald believes that the assessment of the proposed market data fees for ToM, cToM, AIS and MOR is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, market data fees are assessed by other exchanges, including MIAX.[114]

Moreover, the decision as to whether or not to subscribe to ToM, cToM, AIS and MOR is entirely optional to all parties. Potential subscribers are not required to purchase the ToM, cToM, AIS or MOR market data feed, and MIAX Emerald is not required to make the ToM, cToM, AIS or MOR market data feed available. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

MIAX Emerald believes it is reasonable and equitable to waive the market data fees to Distributors during the Waiver Period since the waiver of such fees provides incentives to interested Distributors to receive the data feeds early. This in turn provides MIAX Emerald with potential order flow and liquidity providers as it begins operations. The waiver of the market data fees will apply equally to all Distributors during the Waiver Period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fees in the MIAX Emerald Fee Schedule appropriately reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Emerald 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. Unilateral action by MIAX Emerald in establishing rebates and fees for services provided to its Members and others using its facilities will not have an impact on competition. As a new entrant in the already highly competitive environment for equity options trading, MIAX Emerald does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX Emerald's proposed rebates and fees, as described herein, are comparable to rebates and fees charged by other options exchanges for the same or similar services, including those rebates and fees assessed by its affiliates, MIAX and MIAX PEARL.

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,[115] and Rule 19b–4(f)(2) [116] 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

[113] *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

[114] *See* Securities Exchange Act Release Nos.69323 (April 5, 2013), 78 FR 21677(April 11, 2013)(SR–MIAX–2013–14); 73326 (October 9, 2014), 79 FR 62233 (October 16, 2014)(SR–MIAX–2014–51); 74857 (May 1, 2015), 88 FR 26306 (May 7, 2015)(SR–MIAX–2015–32).

[115] 15 U.S.C. 78s(b)(3)(A)(ii).

[116] 17 CFR 240.19b–4(f)(2).

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–EMERALD–2019–15 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–EMERALD–2019–15. 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–EMERALD–2019–15 and should be submitted on or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[117]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05816 Filed 3–26–19; 8:45 am]

BILLING CODE 8011–01–P

[117] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85386; File No. SR–EMERALD–2019–04]

Self-Regulatory Organizations; MIAX EMERALD, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions

March 21, 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 11, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions, in order to codify the requirement that for each transaction in which a Member[3] participates, the Member may indicate the name of any Clearing Member[4] through which the transaction will be cleared (''Give Up''), and to establish a new ''Opt In'' process by which a Clearing Member can restrict one or more of its OCC numbers and thereafter designate certain Members as authorized to Give Up a restricted clearing number.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its requirements in MIAX Emerald Rule 507 and Rule 513, related to the give up of a Clearing Member by a Member on Exchange transactions. By way of background, to enter transactions on the Exchange, a Member must either be a Clearing Member or must have a Clearing Member agree to accept financial responsibility for all of its transactions. Additionally, Rule 507 currently provides that when a Member executes a transaction on the Exchange, it must give up the name of a Clearing Member (the ''Give Up'') through which the transaction will be cleared (*i.e.,* ''give up''). The Exchange believes that this proposal would result in the fair and reasonable use of resources by both the Exchange and the Member. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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.

[4] The term ''Clearing Member'' means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84624 (November 19, 2018), 83 FR 60547 (November 26, 2018) (SR–Phlx–2018–72) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). *See also* Securities Exchange Act Release No. 84981 (January 9, 2019), 84 FR 837 (January 31, 2019) (SR–Phlx–2018–72) (Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). *See also* Securities Exchange Act Release No. 85136 (February 14, 2019) (SR–Phlx–2018–72) (Order Approving a Proposed Rule Change to Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions).

Recently, certain Clearing Members, in conjunction with the Securities Industry and Financial Markets Association (''SIFMA''), expressed concerns related to the process by which executing brokers on U.S. options exchanges (''Exchanges'') are allowed to designate or 'give up' a clearing firm for the purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[6]

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Member to opt in, at The Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Member, will allow the Clearing Member to specify which Members are authorized to give up that OCC clearing number. As proposed, Rule 507 will be amended to provide that for each transaction in which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared (''Give Up''), provided the Clearing Member has not elected to ''Opt In'', as defined in paragraph (b) of the proposed Rule, and restricted one or more of its OCC number(s) (''Restricted OCC Number'').[7] A Member may Give Up a Restricted OCC Number provided the Member has written authorization as described in paragraph (b)(2) (''Authorized Member'').

Proposed Rule 507(b) provides that Clearing Members may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') as described in subparagraph (b)(1) of Rule 507. If a Clearing Member Opts In, the Exchange will require written authorization from the Clearing Member permitting a Member to Give Up a Clearing Member's Restricted OCC Number. An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in subparagraph (3). If a Clearing Member does not Opt In, that Clearing Member's OCC number may be subject to Give Up by any Member.

Proposed Rule 507(b)(1) will set forth the process by which a Clearing Member may Opt In. Specifically, a Clearing Member may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Members.[8] A copy of the proposed form is attached in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the Member users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Members to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such Member users would still be able to Give Up that Restricted OCC Number during the ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Rule 507(b)(2) will set forth the process for Members to Give Up a Clearing Member's Restricted OCC Number. Specifically, a Member desiring to Give Up a Restricted OCC Number must become an Authorized Member.[9] The Clearing Member will be required to authorize a Member as described in subparagraph (1) or (3) of Rule 507(b) (*i.e.,* through an Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Member is a party to, as set forth in Rule 507(d).

Pursuant to proposed Rule 507(b)(3), a Clearing Member may amend the list of its Authorized Members or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Rule 507(b)(1), the Exchange may permit the Clearing Member to authorize, or remove from authorization for, a Member to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Member if they are no longer authorized to Give Up a Clearing Member's Restricted OCC Number. If a Clearing Member removes a Restricted OCC Number, any Member may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Rule 507(c) will provide that the System will not allow an unauthorized Member to Give Up a Restricted OCC Number. Specifically, the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.[10]

Furthermore, the Exchange proposes to adopt paragraph (d) to Rule 507 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Member that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Member or the Member.

The Exchange also proposes to adopt paragraph (e) to Rule 507 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 301, titled ''Just and Equitable Principles of Trade.'' This language will make clear that the Exchange will regulate an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent), and such behavior would be a violation of Exchange rules.

Furthermore, the Exchange proposes to adopt paragraph (f) to Rule 507 to codify that notwithstanding anything to the contrary in the proposed rule, if a Clearing Member that a Member has indicated as the Give Up rejects a trade,

[6] *See id.*

[7] Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a Member may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. *See* note 10 below.

[8] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member's contact information to assist Members (to the extent they are not already Authorized Members) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Members of such updates on a periodic basis.

[9] The Exchange will develop procedures for notifying Members that they are authorized or unauthorized by Clearing Members.

[10] Specifically, the System will block the entry of the order from the outset. This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a Member if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the Member becoming an Authorized Member. The System will also restrict any post-trade allocation changes if the Member is not authorized to use a Restricted OCC Number.

the Clearing Member that has issued a Letter of Guarantee pursuant to Rule 209, for such executing Member, shall be responsible for the clearance of the subject trade.

Finally, the Exchange proposes to amend Rule 513, which addresses the financial responsibility of Exchange options transactions clearing through Clearing Members, to clarify that this Rule will apply to all Clearing Members, regardless of whether or not they elect to Opt In, pursuant to proposed Rule 507. Specifically, the Exchange proposes to add that Rule 513 will apply to all Clearing Members who either (i) have Restricted OCC Numbers with Authorized Members pursuant to Rule 507, or (ii) have non-Restricted OCC Numbers.

2. Statutory Basis

MIAX Emerald believes that its proposed rule change 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 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.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Members to identify any Clearing Member as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Rule 507 help alleviate this risk by enabling Clearing Members to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Member may Give Up those Restricted OCC Numbers. As described above, all other Members would be required to receive written authorization from the Clearing Member before they can Give Up that Clearing Member's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Members upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Members (other than Authorized Members) to seek authorization from Clearing Members in order to have the ability to give them up, each Member will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Member is party to that arrangement. The Exchange also notes that to the extent that the executing Member has a clearing arrangement with a Clearing Member (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing Members guarantor.[13] Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which protects investors and the public interest. Additionally, the Exchange believes that adopting paragraph (e) of Rule 507 will make clear that an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent) will be a violation of the Exchange's rules, and that such behavior would subject a Member to disciplinary action. For these reasons, the Exchange believes that its proposed changes to Rule 507 and Rule 513, is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by codifying the requirement that for each transaction in a which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared, provided the Clearing Member has not elected to Opt In.

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 an unnecessary burden on intra-market competition because it will apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make MIAX Emerald more attractive for trading, market participants trading on other exchanges can always elect to become Members on MIAX Emerald to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Members under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing relationships while continuing to allow market participant choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Rule 209 (providing that each Member shall provide a letter of guarantee for the Member's trading activities on the Exchange from a Clearing Member in a form and manner prescribed by the Exchange). *See also* proposed Rule 507(f).

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 Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, MIAX Emerald requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change by Nasdaq Phlx LLC.[17] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will provide transparency and operational certainty including through the use of a standardized give up process and would align the give up process with other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–EMERALD–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–EMERALD–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–EMERALD–2019–04 and should be submitted on or before April 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05814 Filed 3–26–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 5.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2019–0012]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections, and one new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *IRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2019–0012].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most

useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 26, 2019. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Tribal Council Coverage Agreement—0960–NEW.* Section 218A of the Social Security Act grants voluntary Social Security coverage to Indian tribal council members. The coverage is voluntary for tribal council members; however, if the tribe wishes to obtain Social Security coverage, they must complete the agreement. Each tribe requesting coverage fills out one agreement. SSA employees collect this information via the paper form. The respondents are Indian tribal councils who wish to receive Social Security coverage for their members.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Tribal Council Coverage Agreement Form	100	1	10	17

2. *Request to be Selected as a Payee—20 CFR 404.2010–404.2055, 416.601–416.665—0960–0014.* SSA requires an individual applying to be a representative payee for a Social Security beneficiary or Supplemental Security Income (SSI) recipient to complete Form SSA–11–BK, or supply the same information to a field office technician through a personal interview. SSA obtains information from applicant payees regarding their relationship to the beneficiary; personal qualifications; concern for the beneficiary's well-being; and intended use of benefits if appointed as payee. The respondents are individuals; private sector businesses and institutions; and State and local government institutions and agencies applying to become representative payees.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Individuals/Households (90%):				
Representative Payee System (RPS)	1,710,000	1	12	342,000
Paper Version	68,400	1	12	13,680
Total	1,778,400			355,680
Private Sector (9%):				
Representative Payee System (RPS)	171,000	1	12	34,200
Paper Version	6,840	1	12	1,368
Total	177,840			35,568
State/Local/Tribal Government (1%):				
Representative Payee System (RPS)	19,000	1	12	3,800
Paper Version	340	1	12	68
Total	19,340			3,868
Grand Total	1,975,580			395,116

3. Statement for Determining Continuing Eligibility for Supplemental Security Income Payment—20 CFR 416.204—0960–0145. SSA uses Form SSA–8202–BK to conduct low and middle-error profile (LEP/MEP) telephone, or face-to-face redetermination interviews with SSI recipients and representative payees, if applicable. SSA conducts LEP redeterminations interviews on a 6-year cycle, and MEP redeterminations annually. SSA requires the information we collect during the interview to determine whether: (1) SSI recipients met, and continue to meet, all statutory and regulatory requirements for SSI eligibility; and (2) the SSI recipients received, and are still receiving, the correct payment amounts. This information includes non-medical eligibility factors such as income, resources, and living arrangements. To complete Form SSA–8202, the respondents may need to obtain information from employers or financial institutions. The respondents are SSI recipients and their representatives, if applicable.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8202–BK	9,954	1	21	3,484
SSI Claims System	2,021,883	1	20	673,944
Totals	2,031,787			677,428

4. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA requires all applicants and recipients of Social Security Old Age, Survivors, and Disability Insurance (OASDI) benefits, or SSI payments, to receive these benefits and payments via direct deposit at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds with their chosen financial institution. We also use this information when an enrolled individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an internet application; in-office or telephone interviews; and our automated telephone system. In addition to using the direct deposit information to enable DD/EFT of funds to the recipient's chosen financial institution, we also use the information through our Direct Deposit Fraud Indicator to ensure the correct recipient receives the funds. Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program, or change their direct deposit banking information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Internet DD	432,482	1	10	72,080
Non-Electronic Services (FO, 800#- ePath, SSI Claims System, SPS, MACADE, POS, RPS)	3,227,426	1	12	645,485
Direct Deposit Fraud Indicator	33,238	1	2	1,108
Totals	3,693,146			718,673

Dated: March 22, 2019.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2019–05834 Filed 3–26–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10720]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Camp: Notes on Fashion'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Camp: Notes on Fashion,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about May 9, 2019, until on or about September 8, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–26 of March 8, 2019.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–05853 Filed 3–26–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10719]

Notice of Determinations; Culturally Significant Object Imported for Exhibition—Determinations: ''Visiting Masterpiece: Gustave Caillebotte's Raboteurs de parquet (Floor Scrapers)'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Visiting Masterpiece: Gustave Caillebotte's Raboteurs de parquet (Floor Scrapers),'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Art Institute of Chicago, in Chicago, Illinois, from on or about April 30, 2019, until on or about September 30, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–26 of March 8, 2019.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–05852 Filed 3–26–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at the Hawkins Field Airport, Jackson, Mississippi

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: The FAA is considering a request from the Jackson Municipal Airport Authority to waive the requirement that 1.75± acres of airport property located at the Hawkins Field Airport in Jackson, Mississippi, be used for aeronautical purposes.

DATES: Comments must be received on or before April 26, 2019.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA to the following address: Jackson Airports District Office, Attn: Graham Coffelt, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jackson Municipal Airport Authority, Attn: Mr. Carl Newman, CEO, 100 International Drive, Jackson, MS 39208 and City of Jackson, Attn: Mr. Chokwe Lumumba, Mayor, 219 South President Street, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Graham Coffelt, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Jackson Municipal Airport Authority and the City of Jackson to dispose of 1.75± acres of airport property at the Hawkins Field Airport (HKS) under the provisions of Title 49, U.S.C. 47153(c). The property will be purchased by The City of Jackson for non-aeronautical purposes. The property is within the existing airport boundary and is adjacent to other non-aeronautical property along Medgar Evers Boulevard. The net proceeds from the sale of this property will be used to acquire 5.36± acres of land for aeronautical purpose and the protection of navigable airspace.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Jackson Medgar Wiley Evers International Airport (JAN).

Issued in Jackson, Mississippi.

Rans D. Black,

Manager, Jackson Airports District Office Southern Region.

[FR Doc. 2019–05828 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–11]

Petition for Exemption; Summary of Petition Received; Patient AirLift Services, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2011–0324 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Lane (202) 267–7280, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW,Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 20, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0324.

Petitioner: Patient AirLift Services, Inc.

Section(s) of 14 CFR Affected: § 61.113(c).

Description of Relief Sought: The petitioner is requesting an extension to its relief from § 61.113(c) of Title 14, Code of Federal Regulations (14 CFR) which allows PALS to reimburse its volunteer pilots for fuel costs incurred in conducting charitable flights. The petitioner requests to expand its relief to include humanitarian purposes in addition to flights for medical purposes. The petitioner states the proposed humanitarian flights will include transporting emergency personnel, equipment, and supplies in time of emergency or public need.

[FR Doc. 2019–05871 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–10]

Petition for Exemption; Summary of Petition Received; Pittsburgh Aviation Animal Rescue Team

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0881 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 20, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0881.

Petitioner: Pittsburgh Aviation Animal Rescue Team (PAART).

Section(s) of 14 CFR Affected: 61.113(c).

Description of Relief Sought: The petitioner received an exemption from § 61.113(c) which allowed PAART's volunteer pilots to obtain reimbursement from PAART for fuel costs incurred in operating flights transporting animals in need of urgent care. As a condition and limitation of that exemption, the FAA required that all pilots (both pilot-in-command (PIC) and the second pilot (not a second-in-command (SIC)) operating under the terms of the exemption must possess a minimum of 50 hours in the specific make and mode of the aircraft being flown. PAART is seeking an amendment to this condition and limitation, as it relates to the second pilot in the Airvan aircraft, to allow the second pilot to fly with a qualified PIC or certified flight instructor to build the time to meet the 50 hour requirement.

[FR Doc. 2019–05873 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–09]

Petition for Exemption; Summary of Petition Received; Mark Rivera Jr.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0158 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Ross, 202–267–9836, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 15, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0158.

Petitioner: Mark Rivera Jr.

Section(s) of 14 CFR Affected: 121.311(a), (b), (c).

Description of Relief Sought: Petitioner seeks relief from 14 CFR part 121.311(b) to the extent required to use a non-FAA approved child restraint system, Spirit Adjustable Positioning System (APS) Car Seat, Model Number CSS–2400, during all phases of flight

while on board a U.S.-certificated aircraft.

[FR Doc. 2019–05870 Filed 3–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2019–0006]

Agency Information Collection Activities: Notice of Request for Renewal of Two Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 28, 2019.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2015–0005 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Please see the individual information collection actions for contact information.

SUPPLEMENTARY INFORMATION:

Title 1: A Guide to Reporting Highway Statistics.

OMB Control Number: 2125–0032.

Abstract: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formula that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands share this burden.

Estimated Average Burden per Response: The estimated average reporting burden per response for the annual collection and processing of the data is 754 hours for each of the States (including local governments), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42,206 hours.

For Further Information Contact: Mr. Michael Dougherty, (202) 366–9234, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI–10), 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Title 2: Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125–0028.

Abstract: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides mile and lane-mile components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA and has recently been updated to support the Transportation Performance Management (TPM) initiative.

Respondents: State governments of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: The estimated average burden per response for the annual collection and processing of the HPMS data is 2,010 hours for each State, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 104,520 hours.

For Further Information Contact: Mr. Robert Rozycki, (202) 366–5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued on: March 21, 2019.

Michael Howell,

Information Collection Officer.

[FR Doc. 2019–05857 Filed 3–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 9, 2019.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Notices and Correspondence Project Committee will be held Tuesday, April 9, 2019, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 22, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–05854 Filed 3–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 10, 2019.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, April 10, 2019, 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 22, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–05855 Filed 3–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be held Thursday, at 3:00 p.m. Eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 22, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–05856 Filed 3–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 26, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire

information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: TD 8517: Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; TD 9599: Property Traded on an Established Market.

OMB Control Number: 1545–1353.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property and determining when property is traded on an established market for purposes of determining the issue price of a debt instrument. The regulations provide needed guidance to holders and issuers of debt instruments.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 645,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 645,000.

Estimated Time per Response: .3 hours per response.

Estimated Total Annual Burden Hours: 195,500.

Title: Form 8882—Credit for Employer-Provided Childcare Facilities and Services.

OMB Control Number: 1545–1809.

Type of Review: Extension without change of a currently approved collection.

Description: Qualified employers use Form 8882 to request a credit for employer-provided childcare facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Form: 8882.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 286.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 286.

Estimated Time per Response: 3.68 hours per response.

Estimated Total Annual Burden Hours: 1,053.

Title: Notice 2006–24, (superseded by NOT 2007–52) Qualifying Advanced Coal Project Program.

OMB Control Number: 1545–2003.

Type of Review: Extension without change of a currently approved collection.

Description: Notice 2006–24 establishes the qualifying advanced coal project program under Sec. 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project. Notice 2007–52 clarifies, modifies, amplifies and supersedes Notice 2006–24. Notice 2008–26 updates and amplifies IRS Notice 2007–52.

Form: None.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 45.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 45.

Estimated Time per Response: 110 hours per response.

Estimated Total Annual Burden Hours: 4,950.

Title: NOT–2009–31—Election and Notice Procedures for Multiemployer Plans Under Sections 204 and 205 of WRERA.

OMB Control Number: 1545–2141.

Type of Review: Extension without change of a currently approved collection.

Description: The guidance in this notice implements temporary, elective relief under the Workers, Retirees, and Employers Relief Act of 2008 (WRERA), which was enacted December 2008 for multi-employer pension plans from certain funding requirements.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,600.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,600.

Estimated Time per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 1,600.

Title: Form 13997, Validating Your TIN and Reasonable Cause.

OMB Control Number: 1545–2144.

Type of Review: Extension without change of a currently approved collection.

Description: Under the provisions of Internal Revenue Code Section (IRC §) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC § 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form is an attachment to Letter 4318 to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

Form: 13997.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 2,000.

Title: Form 13768—Electronic Tax Administration Advisory Committee Membership Application.

OMB Control Number: 1545–2231.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues.

Form: 13768.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 500.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 1.5 hours per response.

Estimated Total Annual Burden Hours: 750.

Title: Section 6708, Failure to Maintain List of Advisees with Respect to Reportable Transactions.

OMB Control Number: 1545–2245.

Type of Review: Extension without change of a currently approved collection.

Description: Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions and to

make that information available to the Secretary upon written request. Section 6708 imposes a penalty on a person required to maintain a list under section 6112 (a ''material advisor'') who fails to make the list available to the IRS upon written request. Under section 6708(a)(1), if a material advisor fails to comply with a written request for the section 6112 list within 20 business days after the request is made, the material advisor is subject to a penalty in the amount of $10,000 for each day of the failure after the 20th business day. The collection of information in the final regulations is in section 301.6708–1(c)(3)(ii). This information is required for the IRS to determine whether good cause exists to grant a person affected by these regulations an extension of the legislatively established 20-business-day period to furnish a lawfully requested list to the IRS.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 25.

Frequency of Response: Annually and On Occasion.

Estimated Total Number of Annual Responses: 25.

Estimated Time per Response: 8 hours per response.

Estimated Total Annual Burden Hours: 200.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 21, 2019.

Jennifer P. Quintana,

Treasury PRA Clearance Officer.

[FR Doc. 2019–05783 Filed 3–26–19; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 26, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Tax and Trade Bureau (TTB)

1. Title: Authorization to Furnish Financial Information and Certificate of Compliance.

OMB Control Number: 1513–0004.

Type of Review: Extension without change of a currently approved collection.

Description: Under its statutory and regulatory authorities, during an alcohol or tobacco permit investigation, the Alcohol and Tobacco Tax and Trade Bureau (TTB) may require such applicants to show that they have the financial standing necessary to conduct their operations in compliance with Federal law. However, the Right to Financial Privacy Act of 1978 (the Act; 12 U.S.C. 3401 *et seq.*) limits the Federal Government's access to the records of individuals held by financial institutions. The Act provides that a person may authorize a financial institution to disclose their individual records to a Federal agency, but it also requires the agency to certify to the institution that the agency has complied with the Act. To meet the Act's requirements, a permit applicant uses TTB F 5030.6 to authorize a financial institution to disclose their individual records to TTB, and TTB uses the form to certify to the institution that the agency has complied with the Act.

Form: TTB F 5030.6.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 240.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 240.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 60.

2. Title: Records Supporting Drawback Claims on Eligible Articles Brought into the United States from Puerto Rico or the Virgin Islands.

OMB Control Number: 1513–0089.

Type of Review: Revision of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 7652(g), the provisions of 26 U.S.C. 5111–5114 providing for drawback (refund) of Federal excise taxes paid on distilled spirits used in certain nonbeverage products—medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfumes—also apply to such articles brought into the United States from Puerto Rico or the U.S. Virgin Islands. In particular, 26 U.S.C. 5112 requires nonbeverage product drawback claimants to keep the records necessary to document the information provided in such claims, subject to regulations prescribed by the Secretary of the Treasury. Based on those IRC authorities, the TTB regulations at 27 CFR 26.174 and 26.310 require persons making nonbeverage product drawback claims on eligible articles brought into the United States from Puerto Rico or the U.S. Virgin Islands to keep certain business, formula, and taxpayment records documenting the data regarding the distilled spirits and articles in question provided in such claims. Those persons must maintain the required records at their business premises for at least 3 years, during which time TTB may inspect the records to verify the data provided in their claims. TTB's verification of such nonbeverage product drawback claims is necessary to protect the revenue and ensure compliance with relevant statutory and regulatory requirements.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 22, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–05886 Filed 3–26–19; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Pricing and Pricing Changes for 2019 United States Mint Numismatic Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is establishing a price for a new United States Mint numismatic product in accordance with the table below:

Product	2019 Retail price
United States Mint Explore and Discover Coin Set™ ..	$19.95

FOR FURTHER INFORMATION CONTACT: Kara Murphy Haire, Marketing Specialist, Numismatic and Bullion Directorate; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202–354–7871.

Authority: 31 U.S.C. 5111, 5112, 5132 & 9701.

Dated: March 22, 2019.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2019–05882 Filed 3–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Minority Veterans will be held in Houston, TX from April 9–11, 2019, at the below times and locations:

Date:	Time:	Location:
April 9, 2019	8:45 a.m. to 11:00 a.m.	Michael E. DeBakey VA Medical Center, 2002 Holcombe Blvd., Houston TX 77030.
	2:00 p.m. to 3:45 p.m.	Houston Regional Office, 6900 Almeda Road, Houston, TX 77030.
April 10, 2019	9:00 a.m. to 11:00 a.m.	Houston National Cemetery Admin Bldg., Conference Room 10410 Veterans Memorial Drive, Houston, TX 77038.
	4:30 p.m. to 6:30 p.m.	Town Hall Meeting at the United Way of Greater Houston Community Resource Center, 50 Waugh Drive, Houston, TX 77007.
April 11, 2019	8:30 a.m. to 4:15 p.m.	Michael E. DeBakey VA Medical Center, 2002 Holcombe Blvd, Houston, TX 77030.

Sessions are open to the public, except when the Committee is conducting tours of VA facilities, and participating in off-site events. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. Sec. 552b(c)(6). The site visit will also include a town hall meeting for minority Veterans and those who provide services to minority Veterans.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans, to assess the needs of minority Veterans and to evaluate whether VA compensation and pension, medical and rehabilitation services, memorial services outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities subsequent to the meeting.

On the morning of April 9 from 8:45 a.m. to 11:00 a.m., the Committee will meet in open session with key staff at the Michael E. DeBakey VA Medical Center (VAMC) to discuss suicide prevention, outreach to minority, women and homeless Veterans, leadership training programs, and MISSION Act/rural health initiatives. From 11:00 a.m. to 12:00 p.m., the Committee will convene with a closed tour of the Houston VAMC. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. Sec. 552b(c)(6).

In the afternoon from 2:00 p.m. to 3:45 p.m., the Committee will reconvene at the Houston Regional Office as the Committee is briefed by senior Veterans Benefits Administration staff from the Houston Regional Office to discuss outreach activities to minority Veterans, women and homeless/incarcerated Veterans, leadership training programs, intake sites, catchment area discussion, claims processing, and the home loan program/transformation initiatives. From 3:45 p.m. to 4:30 p.m., the Committee will conduct a tour of the Houston Regional Office (closed to the public). Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. Sec. 552b(c)(6).

On the morning of April 10 from 9:00 a.m. to 11:00 a.m., the Committee will convene in open session at the Houston National Cemetery followed by a tour of the cemetery. The Committee will meet with key staff to discuss services, benefits, delivery challenges and successes. In the evening, the Committee will hold a Veterans Town Hall meeting beginning at 4:30 p.m., at the United Way of Greater Houston—Community Resource Center.

On the morning of April 11 from 8:30 a.m. to 12:00 p.m., the Committee will convene in open session at the Michael E. DeBakey VA Medical Center (VAMC) to conduct an exit briefing with leadership from the Michael E. DeBakey VA Medical Center (VAMC), Houston Regional Office, and Houston National Cemetery. In the afternoon from 1:00 p.m. to 4:00 p.m., the Committee will work on drafting recommendations for the annual report to the Secretary.

Time will be allocated for receiving public comments on April 11, at 10:00 a.m. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come first serve basis. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official record. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority Veterans from March 15 through April 5, 2019. Such comments should be sent to Ms. Juanita Mullen, Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at *Juanita.Mullen@va.gov.* For additional information about the meeting, please

contact Ms. Juanita Mullen at (202) 461–6199.

Dated: March 22, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–05874 Filed 3–26–19; 8:45 am]

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