AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 84 Wednesday,
No. 64 April 3, 2019

Pages 12873–13104

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 84 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 84, No. 64

Wednesday, April 3, 2019

Agency for Healthcare Research and Quality
NOTICES
Meetings:
National Advisory Council for Healthcare Research and Quality, 13046–13047

Agriculture Department
See Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13002

Air Force Department
NOTICES
Meetings:
Air University Board of Visitors, 13009–13010

Animal and Plant Health Inspection Service
PROPOSED RULES
Evaluation and Recognition of the Animal Health Status of Compartments, 12955–12959

Civil Rights Commission
NOTICES
Meetings:
Arkansas Advisory Committee, 13005
Indiana Advisory Committee, 13004
Mississippi Advisory Committee, 13004
Tennessee Advisory Committee, 13002–13003
Meetings; Sunshine Act, 13003

Coast Guard
RULES
Safety Zone:
Cape Fear River, Wilmington, NC, 12933–12936
San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA, 12933
NOTICES
Environmental Impact Statements; Availability, etc.:
Polar Icebreaker Program; Polar Security Cutter Record of Decision, 13050–13057

Commerce Department
See Foreign-Trade Zones Board
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Comparability Determination for Australia:
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 12908–12929
Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations, 12882–12894
Segregation of Assets Held as Collateral in Uncleared Swap Transactions, 12894–12906
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Core Principles and Other Requirements for Designated Contract Markets, 13008–13009

Defense Department
See Air Force Department
RULES
Allotments for Child and Spousal Support, 12932–12933
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13012
Meetings:
U.S. Strategic Command Strategic Advisory Group, 13011
Service of Process Notification for Child Support and/or Alimony Allotments, 13010–13011

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2020–21 Free Application for Federal Student Aid, 13017–13019
Part 601 Preferred Lender Arrangements, 13016–13017
Applications for New Awards:
Teacher Quality Partnership Grant Program, 13019–13031
Proposed Requirements and Definitions:
Tribally Controlled Postsecondary Career and Technical Institutions Program, 13012–13016

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Final Authorization of State Hazardous Waste Management Program Revisions:
Kentucky, 12937–12938
Mississippi, 12936–12937
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
WasteWise Program, 13040–13041
FY 2019 Supplemental Funding for Brownfields Revolving Loan Fund Grantees, 13042–13043
Request for Nominations:
Environmental Financial Advisory Board Consultants on Stormwater Funding and Financing, 13041–13042

Farm Credit Administration
PROPOSED RULES
Criteria to Reinstate Non-Accrual Loans, 12959–12966

Federal Aviation Administration
RULES
Airworthiness Directives:
HPH s. r.o. Gliders, 12880–12882
Pilatus Aircraft Ltd. Airplanes, 12877–12880
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Operations Specifications, Part 129 Application, 13095

Federal Communications Commission
PROPOSED RULES
Reconfigure the 900 MHz Band to Facilitate Broadband Services, 12987–13001
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13043–13044

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 13044

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility, 12938–12940

Federal Energy Regulatory Commission
NOTICES
Application:
Alabama Power Co., 13038
Consolidated Water Power Co.; Ahlstrom-Munksjo Specialty Solutions Acquisition LLC; Domtar Paper Co., LLC; Domtar Wisconsin Corp., 13034–13035
Empire District Electric Co., 13031–13032
Wisconsin Public Service Corp., Wisconsin Valley Improvement Co., Specialty Papers Acquisition, LLC, PCA Hydro, Inc., Tomahawk Pulp and Power Co., 13035–13036
Wisconsin River Power Co.; Wisconsin Power and Light Co., 13037–13038
Young Storage Gas Company, Ltd., 13038–13039
Combined Filings, 13032–13033, 13039–13040
Environmental Assessments; Availability, etc.:
Columbia Gas Transmission, LLC; VNG Suffolk No. 3 Meter Station Expansion Project, 13033–13034
Inquiry Regarding the Commission's Electric Transmission Incentives Policy, 13033

Federal Maritime Commission
NOTICES
Agreements Filed, 13044

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13044–13046
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 13044

Federal Retirement Thrift Investment Board
PROPOSED RULES
Privacy Act; Systems of Records, 12954–12955

Fish and Wildlife Service
RULES
Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska during the 2019 Season, 12946–12952

Food and Drug Administration
PROPOSED RULES
Beverages:
Bottled Water, 12975–12979
Public Hearing:
The Future of Insulin Biosimilars: Increasing Access and Facilitating the Efficient Development of Biosimilar and Interchangeable Insulin Products, 12966–12969
Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds, 12969–12975

Foreign-Trade Zones Board
NOTICES
Production Activity:
GE Renewables North America, LLC; Foreign-Trade Zone 249; Pensacola, FL, 13005

General Services Administration
NOTICES
Meetings:
World War One Centennial Commission, 13046

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13047–13048

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Interior Department
See Fish and Wildlife Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Semiconductor Devices, Integrated Circuits, and Consumer Products Containing the Same, 13065–13066
Sodium Sulfate Anhydrous from Canada, 13066–13067
Possible Modifications to the International Harmonized System Nomenclature, 13067–13069

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Census of State and Federal Adult Correctional Facilities, 13070–13072
USMS Promotional Vendor Registration Website, 13069–13070

Labor Department
NOTICES
Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 13072–13074
Vacancy Posting:
Administrative Review Board, 13074

National Highway Traffic Safety Administration
NOTICES
Grant of Petition for Decision of Inconsequential Noncompliance:
Jaguar Land Rover North America, LLC, 13095–13098

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 13050
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 13048
National Cancer Institute, 13049–13050
National Center for Complementary and Integrative Health, 13049
National Institute on Aging, 13049–13050
National Institute on Drug Abuse, 13048–13049

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock in Statistical Area 610 in the Gulf of Alaska, 12952–12953
NOTICES
Addition of Species to the Annexes of the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region, 13006–13008
Permit Application:
Marine Mammals; File No. 22479, 13006

National Park Service
NOTICES
Native American Graves Protection and Repatriation Review Committee Finding:
Human Remains and Associated Funerary Objects under the Control of the State of Missouri Department of Natural Resources, State Historic Preservation Office, Jefferson City, MO, 13064–13065

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 13074

Nuclear Regulatory Commission
RULES
Reactor Vessel Material Surveillance Program, 12876–12877

Personnel Management Office
RULES
Examining System, 12873–12876

Postal Regulatory Commission
NOTICES
New Postal Products, 13074–13075

Presidential Documents
ADMINISTRATIVE ORDERS
Pipeline Facilities at the U.S.-Canada International Boundary; Authorization for TransCanada Keystone Pipeline, L.P. To Construct, Connect, Operate, and Maintain (Permit of March 29, 2019), 13099–13103

Securities and Exchange Commission
RULES
Public Company Accounting Oversight Board Hearing Officers, 12906–12908
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13090
Application:
iM Global Partner US LLC and Manager Directed Portfolios, 13081–13082
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Europe Ltd., 13087–13090
Miami International Securities Exchange, LLC, 13093–13095
Miami PEARL, LLC, 13090–13093
The Options Clearing Corp., 13075–13087

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Ohio Regulatory Program, 12979–12981
Pennsylvania Regulatory Program, 12981–12984
West Virginia Regulatory Program, 12984–12987

Surface Transportation Board
RULES
Payment, Filing, and Service Procedures, 12940–12946
NOTICES
Quarterly Rail Cost Adjustment Factor, 13095

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
RULES
Gulf Coast Restoration Trust Fund, 12929–12932
NOTICES
Meetings:
Federal Advisory Committee on Insurance, 13098

U.S. Citizenship and Immigration Services
NOTICES
Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians Before Period of Deferred Enforced Departure Ends, 13059–13064
Memorandum on Extension of Deferred Enforced Departure for Liberians, 13064

U.S. Customs and Border Protection
NOTICES
Domestic Interested Party Petition:
Tariff Classification of Steel Special Profiles for the Manufacture of Forklift Truck Masts and Carriages, 13057–13059

Separate Parts In This Issue

Part II
Presidential Documents, 13099–13103

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Permit: March 29, 2019 13101

5 CFR

337 12873

Proposed Rules:

1630 12954

9 CFR

Proposed Rules:

92 12955

10 CFR

50 12876

12 CFR

Proposed Rules:

611 12959
615 12959
621 12959

14 CFR

39 (2 documents) 12877, 12880

17 CFR

Ch. I 12908
1 12882
23 12894
202 12906

21 CFR

Proposed Rules:

15 (2 documents) 12966, 12969
165 12975

30 CFR

Proposed Rules:

935 12979
938 (2 documents) 12981, 12983
948 12984

31 CFR

34 12929

32 CFR

54 12932

33 CFR

165 (2 documents) 12933

40 CFR

271 (2 documents) 12936, 12937

44 CFR

64 12938

47 CFR

Proposed Rules:

1 12987
2 12987
20 12987
27 12987
90 12987

49 CFR

1002 12940
1012 12940
1104 12940
1110 12940
1111 12940
1113 12940
1130 12940
1132 12940
1150 12940
1152 12940
1155 12940
1182 12940
1244 12940
1312 12940
1313 12940

50 CFR

92 12946
679 12952

Rules and Regulations

Federal Register
Vol. 84, No. 64
Wednesday, April 3, 2019

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206–AN65

Examining System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to implement changes to part 337 of OPM's regulations, which govern direct hire authority. Executive Order (E.O.) 13833, ''Enhancing the Effectiveness of Agency Chief Information Officers'' requires OPM to issue proposed regulations delegating to the head of a covered agency authority necessary to determine whether there is a severe shortage of candidates or a critical hiring need for information technology (IT) positions, under criteria established by OPM. OPM published the proposed regulations, has considered proposed comments, and has now determined to adopt a final rule making this change. The intended effect of this change is to enable Chief Information Officers to hire urgently needed IT professionals more quickly.

DATES: This rule is effective May 3, 2019.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps by telephone on (202) 606–0960, by fax (202) 606–4430, by TTY at (202) 418–3134, or by email at *Darlene.phelps@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 29, 2018, OPM issued proposed regulations at 83 FR 209, as contemplated by E.O. 13833, ''Enhancing the Effectiveness of Agency Chief Information Officers.'' Section 9 of the E.O. directed OPM to propose regulations pursuant to which OPM could delegate to the heads of certain agencies (other than the Secretary of Defense) authority to determine, under regulations prescribed by OPM, whether a severe shortage of candidates (or, for the U.S. Department of Veterans Affairs (VA) a severe shortage of highly-qualified candidates) or a critical hiring need exists for positions in the Information Technology Management series, general schedule (GS)–2210, for purposes of demonstrating a need for a Direct Hire Authority. The agencies covered by the E.O. are those listed in 31 U.S.C. 901(b), or independent regulatory agencies defined in 44 U.S.C. 3502(5). OPM received seven sets of comments in response to the proposed rule. A discussion of these comments follows.

Discussion of Comments

One individual expressed general support for the proposed rule, and opined that the risk and cost of potential cronyism is an acceptable opportunity cost of a direct hire authority. As a general matter, Congress has determined that in cases where a severe shortage or critical hiring need exists, direct hire authority is justified as a legitimate exception from the normal rules of competitive hiring. The use of the authority is subject to Merit System Principles, which include requirements that selection and advancement be determined solely on the basis of relative ability, knowledge and skills, regardless of the hiring authority used to fill a position. Further, OPM contends that the opportunity cost for cronyism, favoritism, and nepotism is not only the highest cost that a Government can pay, but is fundamentally at odds with Civil Service law. In accordance with statute, OPM's regulations prescribe the criteria that must be met in order to authorize direct hire authority, consistent with Congressional intent. In addition, OPM will take the following steps to help ensure this DHA is used appropriately by Federal agencies: (1) OPM will update its guidance on DHA at *https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/* with an emphasis to hiring managers and human resources personnel that when using DHA agencies are required to employ an objective selection process, such as selecting qualified candidates (including individuals entitled to veterans' preference) as they are found; (2) OPM will provide agencies with interactive sessions on how to use DHA, aimed at hiring managers and human resources personnel, through a variety of media: (3) OPM will review and monitor agencies' use of this authority, including hiring patterns, etc. Furthermore, the proposed regulation requires agencies to notify OPM when an agency head authorizes DHA and to provide to us the justification on which the approval was based. OPM is retaining this requirement in the final rule so that OPM will know which agencies are using this DHA, and can provide oversight to ensure that it is being used appropriately.

Another individual commented on the severity of the wildfire season in 2018. OPM is not addressing this comment as it not within the scope of the proposed regulation.

A representative from an internet-based professional networking service suggested the final rule should encourage agencies to use this hiring flexibility. OPM is not adopting this suggestion. Each agency must decide independently whether its particular circumstances justify the need for a DHA in accordance with the statutory and regulatory criteria required for an approval.

The same individual suggested the internet-based professional networking service could help agencies determine when to implement DHA, based on the presence of competitors for the same skill-sets for which the agency is recruiting. OPM is not accepting this comment both because it is, in part, beyond the scope of this regulation and because it proceeds from a faulty premise as to the applicable standards that govern when a direct hire authority is appropriate. In using this delegation of authority, agencies must apply the provisions of 5 CFR part 337, 5 CFR part 330 subparts F and G. In doing so, agencies may rely upon a variety of data sources to gauge, in part, the availability of skill-sets to determine the presence of a severe shortage of candidates in accordance with 5 CFR 337.204. We also note that agencies must provide public notice of any vacancy to be filled through a direct hire authority, in accordance with 5 U.S.C. 3304(a)(3)(A) and 5 CFR 330.104.

Another individual commented that agencies may find recruitment of skilled IT professionals using this authority difficult if the hiring agency cannot match the level of salary and benefits

offered by private sector employers. The commenter also suggested that OPM take steps to encourage agencies to use this authority to their advantage. The first comment is, essentially, an observation and thus does not require a response. OPM is not adopting the second suggestion. As noted above, each agency must decide independently whether its particular circumstances meet the statutory and regulatory criteria and thus justify using this delegation of authority. OPM provides guidance to agencies on DHA at: *https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/*.

One commenter expressed concern that this authority will be used by agencies to avoid applying veterans' preference when filling IT jobs. This commenter stated, ''Direct hire authority is often nothing more than a work around for statutory veterans' preference rights. At a minimum, there should be an objective and impartial review of the facts supporting a direct hire authority, and having each agency be its own judge and jury, as OPM is proposing, is fraught with problems. In my agency, we get many qualified applicants for IT jobs, so there is no shortage of good candidates. We are going to get a lot of pressure to do direct hire just to avoid having to hire well qualified veterans. This is bad for veterans and bad for civil service. Maybe agencies should have to show their veterans hiring numbers are good before they can use the direct hire.''

Another individual expressed a similar concern about the impact of this authority on veterans' preference and asked that OPM conduct rigorous reviews of agencies who use this authority. This individual commented, ''I am writing concerning the proposal to grant agency heads the authority to determine which IT specialties may fall under the direct hire authority. In the last five years that I have been involved in staffing, to include a stint as the chief of our Delegated Examining Unit, it has been my experience that we usually receive large numbers of best qualified candidates for IT Specialist job announcements. When selecting officials in the agency complain about a certificate we issue, the basis for the complaint is that veterans with preference are the only applicants on the certificate. In our agency, approximately 70 percent of the IT workforce are contractors, and usually the selecting official wishes to hire one of his or her contractors that is not within reach because they are not a veteran with preference. My agency has a practice of announcing most positions for five days, yet we still average 50 to 100 or more applicants for each IT Specialist position we advertise. I fear agencies will mis-use the proposed direct hire authority to essentially make the entire IT Specialist, GS–2210 occupation direct hire. OPM will need to institute rigorous review of agencies who use the authority to ensure they do not abuse it; however, personally I think the proposed direct hire authority is an invitation to agencies to circumvent veterans' preference. As I stated above, selecting officials object to certificates with plenty of best-qualified veterans, not because of qualifications, but because of the inability to select contractors currently working in their organization.''

In response to the overall concern regarding veterans' preference, OPM is strongly committed to connecting the brave men and women who serve our Nation with opportunities to continue their service in the Federal workforce. OPM will continue our close coordination with the Department of Labor and Department of Veterans Affairs as required under E.O. 13518, which established the Veterans Employment Initiative. Additionally, OPM will continue our efforts across government to support agencies as they seek to hire veterans.

With respect to the first comment, OPM agrees with the need for an 'objective and impartial review of the facts supporting a direct hire authority.' The final rule provides this mechanism by establishing OPM as the impartial reviewer. The rule requires that when using this authority, an agency head must authorize DHA based on justification provided by the agency's Chief Human Capital Officer (or equivalent) in accordance with the provisions and criteria specified in 5 CFR part 337. Further, once an agency head authorizes DHA using this criteria the deciding agency is required to provide the determination and a description of the supporting evidence to OPM. OPM may request access to the underlying documentation at any time, and may require corrective action in accordance with 5 U.S.C. 1104(c) and section 337.206 of the regulation. In accordance with 5 CFR 337.206 OPM will monitor agencies' use of DHA under this authority and may terminate or modify any DHA if OPM finds the basis on which such DHA was granted no longer exists, or when an agency has used an authority improperly. Regarding the commenter's concern that an agency may authorize DHA when a lack of qualified IT applicants exists, 5 CFR 337.206 requires agencies to notify OPM when the agency finds adequate numbers of qualified candidates previously filled under DHA based on a severe shortage of candidates. OPM will make this requirement a point of emphasis in its updated guidance and technical assistance. In addition, OPM will rely on a variety of data sources to monitor how DHA's under this authority are being utilized, to include the availability of qualified applicants as captured through USAJOBS and USASTAFFING data, nationwide labor trends on the availability of IT specialists in the general labor pool, the results of agencies' past attempts to fill IT jobs through other hiring mechanisms, the number of pass over request made for preference-eligible veterans initially deemed to be qualified for these DHA covered IT positions, and the number of selections of qualified preference-eligible veterans hired under this authority. In addition OPM's Merit System Accountability and Compliance reports, which are periodic reviews of agency hiring practices, will also serve provide an objective basis on which to gauge how agencies are using this DHA.

With respect to the second comment, OPM agrees that oversight by OPM is necessary. We believe that current statutory and regulatory authority exists in order for us to do so. In addition to the checks and measures described in the preceding paragraph OPM notes that any delegation of authority provided by OPM under 5 U.S.C. 1104(b)(2) requires a corresponding oversight program for use of the delegation. To facilitate this process OPM will be establishing a unique authority code for this DHA which will assist us in monitoring each agency's use of this authority.

A Federal agency questioned the effectiveness of the time limitations on appointments made under this authority. The agency noted that IT modernization may be a permanent or on-going endeavor and suggested OPM provide for permanent appointments under this authority. OPM is not adopting this suggestion. We are adopting the time limits on appointments as proposed. Our rationale for doing so is to attune these rules with the hiring patterns of the twenty first century, in particular those of the IT workforce. Agencies are making greater use of time-limited employees than in the past and are expected to continue to do so. Likewise, many individuals prefer Federal employment that is characterized by a time-limited or project nature, with movement in and out of public service, rather than the traditional 30-year career model. Agencies with a need to make appointments of IT personnel on a permanent basis in response to a critical

hiring need or severe shortage of candidates may continue to request DHA from OPM pursuant to Subpart B of 5 CFR part 337. OPM retains the ability to authorize DHA to agencies, in appropriate circumstances, when presented with a well-justified request for DHA to fill positions on a permanent basis.

OPM is adopting the proposed rule without change.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

E.O. 13563 and E.O. 12866, Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing benefits, of harmonizing rules, and of promoting flexibility. This final rule is not a ''significant regulatory action,'' under Executive Order 12866.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This final rule is not an E.O. 13771 (82 FR 9339, February 3, 2017) action because this rule is not significant under E.O. 12866.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Lists of Subjects in 5 CFR Part 337

Government employees.

Office of Personnel Management.

Steve Hickman,

Regulatory Affairs Analyst.

Accordingly, OPM is revising 5 CFR part 337 of title 5, Code of Federal Regulations, as follows:

PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; 117 Stat. 1392, 1665; and E.O. 13833.

Subpart B—Direct Hire Authority

■ 2. In § 337.204, add paragraph (d) to read as follows:

§ 337.204 Severe shortage of candidates.

* * * * *

(d) *Information Technology (IT) positions.* (1) The head of a covered agency, as defined in paragraph (d)(2) of this section, may determine whether a severe shortage of candidates exists at that agency for any position in the information technology management series, general schedule (GS)–2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8). For purposes of paragraph (b)(5) of this section, the U.S. Department of Veterans Affairs (VA) need only determine whether a severe shortage of highly-qualified candidates exists. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct hire authority for covered positions within the agency.

(2) *Covered agency.* A covered agency is an entity listed in 31 U.S.C. 901(b) (except the Department of Defense), or an independent regulatory agency defined in 44 U.S.C. 3502(5).

(3) *Notification to the U.S. Office of Personnel Management (OPM).* Once the head of a covered agency affirmatively determines the presence of a severe shortage and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) *Using this authority.* A covered agency must adhere to all provisions of subpart B of this part.

(5) *Length of appointments.* A covered agency may use this authority to appoint individuals for a period of more than 1 year, but not more than 4 years.

(i) A covered agency may extend any appointment under this authority for up to 4 additional years, if the direct hire authority remains in effect.

(ii) No individual may serve more than 8 years on an appointment made under these provisions for information technology positions.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

■ 3. In § 337.205, add paragraph (c) to read as follows:

§ 337.205 Critical hiring needs.

* * * * *

(c) *Information Technology (IT) positions.* (1) The head of a covered agency, as defined in paragraph (c)(2) of this section, may determine whether a critical hiring need exists for any position in the information technology management series, general schedule (GS)–2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence criteria prescribed in paragraphs (b)(1) through (4) of this section. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct hire authority for covered positions within the agency.

(2) *Covered agency.* A covered agency is an entity listed in 31 U.S.C. 901(b) (excluding the Department of Defense),

or an independent regulatory agency defined in 44 U.S.C. 3502(5).

(3) *Notification to the U.S. Office of Personnel Management (OPM).* Once the head of a covered agency affirmatively determines the presence of a critical hiring need and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) *Using this authority.* A covered agency must adhere to all provisions of subpart B of this part.

(5) *Length of appointments.* A covered agency may use this authority to appoint individuals for a period of more than 1 year, but not more than 4 years, if the direct hire authority remains in effect.

(i) A covered agency may extend an appointment under this authority for up to 4 additional years.

(ii) No individual may serve more than 8 years on an appointment made under these provisions for information technology positions.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

[FR Doc. 2019–06396 Filed 4–2–19; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2017–0151]

RIN 3150–AK07

Reactor Vessel Material Surveillance Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory basis; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a regulatory basis to support a rulemaking that would amend the NRC's regulations for the light-water power reactor vessel material surveillance programs. The rulemaking would reduce the regulatory burden associated with the testing of specimens contained within surveillance capsules, and reporting the surveillance test results. The NRC has completed a regulatory basis that demonstrates there is sufficient justification to proceed with rulemaking. The NRC is providing the basis for rulemaking for public information, but is not seeking public comment on the regulatory basis at this time.

DATES: The regulatory basis is available April 3, 2019.

ADDRESSES: Please refer to Docket ID NRC–2017–0151 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0151. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 regulatory basis is available in ADAMS under Accession No. ML18057A005.
- *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: Stewart Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4123, email: *Stewart.Schneider@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Appendix H, ''Reactor Vessel Material Surveillance Program Requirements'' (appendix H), to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' requires light-water nuclear power reactor licensees to have a reactor vessel (RV) material surveillance program to monitor changes in the fracture toughness properties of the RV materials adjacent to the reactor core. Unless it can be shown that the end of design life neutron fluence is below certain criteria, the NRC requires licensees to implement an RV materials surveillance program that tests irradiated material specimens that are located in surveillance capsules in the RVs. The program evaluates changes in material fracture toughness and thereby assesses the integrity of the RV. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of American Society for Testing and Materials International (ASTM) E 185–82, ''Standard Recommended Practice for Conducting Surveillance Tests for Light-Water Cooled Reactor Vessels,'' to the extent practicable for the configuration of the specimens in the capsule. The design of the surveillance program and the withdrawal schedule must meet the requirements of the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the RV was purchased. Later editions of ASTM E 185, up to and including those editions through 1982, may be used. In sum, the surveillance program must comply with ASTM E 185, as modified by appendix H to 10 CFR part 50. The number, design, and location of these surveillance capsules within the RV are established during the design of the program, before initial plant operation.

Appendix H to 10 CFR part 50 also specifies that each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted within 1 year of the date of capsule withdrawal, unless an extension is granted by the Director, Office of Nuclear Reactor Regulation. The NRC uses the results from the surveillance program to assess licensee submittals related to pressure-temperature limits in accordance with appendix G, ''Fracture Toughness Requirements,'' to 10 CFR part 50 and to assess pressurized water reactor licensee's compliance with § 50.61, ''Fracture toughness requirements for protection against pressurized thermal shock events,'' or § 50.61a, ''Alternate fracture toughness requirements for protection against pressurized thermal shock events.''

In 2001, the NRC began a rulemaking to revise appendix G to 10 CFR part 50 (RIN 3150–AG98; NRC–2008–0582) to eliminate the pressure-temperature limits related to the metal temperature of the RV closure head flange and vessel flange areas. The NRC expanded the rulemaking scope in 2008 to include revisions to appendix H to 10 CFR part 50, because the fracture toughness analysis required by appendix G to 10 CFR part 50 relies on data obtained from the RV material surveillance program established under appendix H to 10 CFR part 50.

In COMSECY–14–0027, ''Rulemaking to Revise Title 10, *Code of Federal Regulations,* Part 50, Appendix H, 'Reactor Vessel Material Surveillance Program Requirements,' '' issued on

June 25, 2014 (not publicly available), the NRC staff requested Commission approval to separate the rulemaking activities to revise appendices G and H to 10 CFR part 50, and to proceed immediately with rulemaking for appendix H to 10 CFR part 50.

In staff requirements memorandum (SRM) to COMSECY–14–0027, dated August 8, 2014 (not publicly available), the Commission approved the staff's recommendation to proceed with a separate rulemaking for appendix H to 10 CFR part 50. The SRM to COMSECY–14–0027 directed the NRC staff to begin the appendix H to 10 CFR part 50 rulemaking independent of the completion date or conclusions of the appendix G to 10 CFR part 50 technical basis development activities.

II. Discussion

The NRC has prepared a regulatory basis to support a rulemaking that would amend the NRC's testing and reporting requirements in appendix H to 10 CFR part 50. In the regulatory basis, the NRC concluded that it has sufficient justification to proceed with rulemaking to amend appendix H to 10 CFR part 50.

Testing Requirements. Appendix H to 10 CFR part 50 requires RV surveillance programs to include Charpy impact specimens from welds, base metal, and the weld heat-affected zone materials and tensile specimens from welds and base metal materials. The NRC is proposing to conduct a rulemaking to reduce the testing of some specimens and eliminate the testing of other specimens that do not provide meaningful information to assess RV integrity. This decision is based on substantial material data, knowledge, and experience attained through the many years of RV surveillance program implementation. Specifically, the requirements to test weld heat-affected zone specimens and examine thermal monitors would be eliminated. Also, the NRC is proposing to reduce the number of tensile specimens that require testing and specify that testing correlation monitor material is optional. The proposed changes would reduce the burden to licensees for specimen testing, without having an adverse effect on public health and safety and the environment.

Reporting Requirements. Appendix H to 10 CFR part 50 requires licensees to submit test results to the NRC no later than 1 year after capsule withdrawal. As stated in the 1983 rulemaking (48 FR 24008; May 27, 1983), the primary purposes of the requirement are timely reporting of test results and notification of any problems. At the time of the 1983 rulemaking there was a limited amount of data from irradiated materials from which to estimate embrittlement trends of RVs at nuclear power plants; thus, making it crucial for the timely reporting of test results. An extensive amount of embrittlement data now exists, and embrittlement mechanisms are well-understood. The 1-year reporting requirement has become a hardship for some licensees because of the implementation of integrated surveillance programs (which require significant coordination among multiple licensees and hot-cell laboratories) and because capsules with higher neutron fluence levels may need longer periods of radioactive decay before capsule shipping and testing can be performed. As a result, licensees have been requesting an additional 6 months to submit reports. To reduce the burden on licensees to prepare these extension requests and for the NRC to review and approve these requests, the NRC is proposing rulemaking to increase the reporting period from 1 year to 18 months. This change would not have an adverse effect on public health and safety and the environment.

Rulemaking Process. The NRC has evaluated the planned amendments to appendix H to 10 CFR part 50 and has determined that, if implemented, there would not be an adverse effect on public health and safety. In addition, the NRC has analyzed the costs to conduct this rulemaking and has determined that the most efficient approach is to use the direct final rule process. This abbreviated process would minimize the use of agency resources and potentially allow the revised requirements to become effective sooner, thus providing licensees the benefits of the rule change sooner. Although the NRC does not anticipate receiving public comments that are significant and adverse, the NRC's rulemaking process for this action will provide the public an opportunity to comment on the direct final rule. Read more about the direct final rule process on the NRC's public website, at *https://www.nrc.gov/about-nrc/regulatory/rulemaking/rulemaking-process/direct-final-rule.html.*

III. Publicly-Available Documents

As the NRC continues its ongoing rulemaking effort to revise the requirements for an RV materials surveillance program, the NRC is making documents publicly available on the Federal rulemaking website, *www.regulations.gov,* under Docket ID NRC–2017–0151. The current status of this rulemaking effort, as well as other NRC planned rulemaking activities, can be found on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleIndex.html.*

The NRC may post additional materials relevant to this rulemaking at *www.regulations.gov,* under Docket ID NRC–2017–0151. Please take the following actions if you wish to receive alerts when changes or additions occur in a docket folder: (1) Navigate to the docket folder (NRC–2017–0151); (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 28th day of March 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 2019–06418 Filed 4–2–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0205; Product Identifier 2019–CE–001–AD; Amendment 39–19598; AD 2019–05–15]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. Model PC–7 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as chafed and burned wires located under panel F5. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 23, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 23, 2019.

We must receive comments on this AD by May 20, 2019.

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

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

- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/en.* You may view this referenced service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–0205.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0205; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued AD HB–2019–002, dated January 28, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain serial-numbered Pilatus Aircraft Ltd. Model PC–7 airplanes. The MCAI states:

> During a scheduled inspection several chafed and burned wires located under panel F5 were found.
>
> This condition, if not detected and corrected, could lead to smoke/fume in the cockpit and in a possible in-flight fire.
>
> To address this potential unsafe condition, Pilatus Aircraft Ltd. issued the [service bulletin] SB to provide applicable inspection instructions.
>
> For the reason described above, this [FOCA] Airworthiness Directive (AD) requires a visual inspection of the wires below the panel F5 and, depending on findings, accomplishment of applicable corrective action(s).

FOCA advises that although aircraft are manufactured with sufficient clearance between the wiring loom and the components installed below access panel F5, the wiring looms may be moved when components installed in the front instrument panel are removed and re-installed during maintenance. As a result, the wiring looms can come into contact with other equipment, causing chafing damage. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0205.

Related Service Information Under 1 CFR Part 51

Pilatus Aircraft Ltd. has issued Pilatus PC–7 Service Bulletin No. 24–008, Rev. No. 1, dated December 20, 2018. The service information contains procedures for inspecting the wires below access panel F5 for chafing and contact with the casings of the line replacement unit (LRU), panel edges, and environmental control system (ECS) hoses; replacing exposed bare wires; repairing chafed wires by installing a protective sleeve; inspecting the metal clips on the demist hoses to make sure they are not in contact with the wiring looms; and if necessary, adjusting the orientation of the metal clips to put their sharp edges away from the wiring loom. The service information also specifies reporting information to Pilatus Aircraft Ltd. so it can determine if follow-on action will be necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of the AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because chafing of electrical cables through the insulation could lead to arching, which may cause smoke or fumes in the cockpit and result in a possible in-flight fire. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0205; Product Identifier 2019–CE–001–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 18 products of U.S. registry. We also estimate that it would take about 3.5 work-hours per product to comply with the inspection requirement of this AD and 5 minutes to comply with the reporting requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the inspection and reporting requirement in this AD on U.S. operators to be $5,481, or $304.50 per product.

In addition, we estimate the labor and parts costs for the follow-on actions as necessary:

• Repairing chafed wires and installing a protective sleeve would take about 1.5 work-hours for a cost of $127.50 per product.

• Replacing burnt or bare wires would take about 4 work-hours and require parts costing approximately $2,000 for a cost of $2,340.

• Adjusting metal clips would take about .5 work-hour for a cost of $42.50.

We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–05–15 Pilatus Aircraft Ltd: Amendment 39–19598; Docket No. FAA–2019–0205; Product Identifier 2019–CE–001–AD.

(a) Effective Date

This AD becomes effective April 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–7 airplanes, manufacturer serial number (MSN) 101 through MSN 537, MSN 548 through MSN 609, and MSN 613 through MSN 618, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 24: Electric Power.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as chafed and burned wires located under panel F5. We are issuing this AD to detect and correct chafed and burned wires under panel F5, which could lead to smoke or fumes in the cockpit and result in a possible in-flight fire.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (2).

(1) Within the next 120 days after the effective date of this AD, do the following inspections:

(i) Visually inspect all wires below access panel F5 for signs of chafing and contact with the casings of the line replacement units (LRUs), panel edges, or environmental control system (ECS) hoses. If there is any chafing or contact, before further flight, do all corrective actions by following the Accomplishment Instructions, paragraphs 3.B.(2) through 3.B.(3), in Pilatus PC–7 Service Bulletin No. 24–008, Rev. No. 1, dated December 20, 2018.

(ii) Visually inspect the metal clips on the demist hoses for signs of contact with the wiring looms. If there is any contact, before further flight, adjust the clips by following the Accomplishment Instructions, paragraph 3.B.(5), in Pilatus PC–7 Service Bulletin No. 24–008, Rev. No. 1, dated December 20, 2018.

(2) Within 10 days after completing the inspections required in paragraph (f)(1)(i) and (ii) of this AD or within the next 10 days after the effective date of this AD, whichever occurs later, report the results of the inspections, both negative and positive, to Pilatus Aircraft Ltd. at the address listed in paragraph (i)(3) of this AD. On the report, include whether there were any chafed wires, casing contacts that needed to be relocated, or metal clip adjustments. You may use the Service Bulletin Evaluation Sheet in Pilatus PC–7 Service Bulletin No. 24–008, Rev. No. 1, dated December 20, 2018, for this purpose, but include the above findings of the inspection.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA, or the Federal Office of Civil Aviation (FOCA).

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to

be approximately 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(h) Related Information

Refer to MCAI FOCA AD HB–2019–002, dated January 28, 2019, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0205.

(i) Material Incorporated by Reference

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

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

(i) Pilatus Aircraft Ltd. PC–7 Service Bulletin No. 24–008, Rev. No. 1, dated December 20, 2018.

(ii) [Reserved]

(3) For Pilatus Aircraft Ltd. service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/en.*

(4) You may view this service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–0205.

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

Issued in Kansas City, Missouri, on March 25, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–06284 Filed 4–2–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0202; Product Identifier 2018–CE–050–AD; Amendment 39–19597; AD 2019–04–01]

RIN 2120–AA64

Airworthiness Directives; HPH s. r.o. Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for HPH s. r.o. Models Glasfügel 304C, Glasfügel 304CZ, and Glasfügel 304CZ–17 gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as jamming between the double two-ring end of the towing cable and the deflector angles of the center of gravity (C.G.) release mechanism. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 23, 2019

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 2019.

We must receive comments on this AD by May 20, 2019.

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

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

For service information identified in this AD, contact HPH, spol.s r.o., Čáslavská 234, 284 01 Kutná Hora, Czech Republic; phone: +420 327 513 441; email: *info@hph.cz;* internet: *www.hph.cz.* You may view this referenced service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–0202.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0202; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Policy and Innovation Divsion, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2018–0207–E, dated September 19, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Jamming between the double two ring end of the towing cable and the deflector angles of the affected part [C.G. release mechanism] was reported for certain Glasfaser-Flugzeug-Service sailplanes. Subsequent investigation identified incorrect geometry of the deflector angles of the affected part as likely cause of the jamming. Consequently, EASA issued Emergency AD 2018–0143–E to require repetitive inspections.
>
> Due to design similarities between Glasfaser Glasflügel 304 sailplanes and the HPH Glasflügel 304, it was determined that the same unsafe condition could also affect those sailplanes.
>
> This condition, if not detected and corrected, could lead to failure to disconnect the towing cable, possibly resulting in reduced or loss of control of the sailplane.
>
> To address this potential unsafe condition, HPH, spol.s r.o. issued the SB to provide inspection instructions and corrective action.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the affected part, and, depending on findings, accomplishment of applicable corrective actions(s).

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0202.

Related Service Information Under 1 CFR Part 51

HPH spol.s r.o. has issued Service bulletin No. G304 CZ–10 a), G304 CZ–17—10 a), G304 C–10 a), dated August 28, 2018 (co-published as one document). The service information contains procedures for measuring the distance between the deflector angles at the C.G. release and modifying the distance between the deflector angles if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Interim Action

We consider this AD interim action. The MCAI requires repeating the actions in this AD at each annual inspection. We plan to publish a notice of proposed rulemaking for these requirements. The planned compliance time for these repetitive measurements would allow enough time to provide notice and opportunity for prior comment.

FAA's Determination and Requirements of This AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition, if not detected and corrected, could lead to failure to disconnect the towing cable, possibly resulting in losing of control of the glider, which could cause injury to people on the ground if the towing cable breaks during a winch launch. As such, operators must take corrective action before the next launch of the glider. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0202; Directorate Identifier 2018–CE–050–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 45 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to measure the distance between the deflector angles. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $3,825, or $85 per product.

We estimate that any modification of the deflector angles that may be necessary as a result of the inspection will take about 4 work-hours and require parts costing $100, for a cost of $440 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–04–01 HPH s. r.o.: Amendment 39–19597; Docket No. FAA–2019–0202; Directorate Identifier 2018–CE–050–AD.

(a) Effective Date

This AD becomes effective April 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to HPH s. r.o. Models Glasfügel 304C, Glasfügel 304CZ, and Glasfügel 304CZ–17 gliders, all serial numbers, certificated in any category, with a center of gravity (C.G.) tow release installed.

(d) Subject

Air Transport Association of America (ATA) Code 25: Equipment/Furnishing.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as jamming between the double two-ring end of the towing cable and the deflector angles of ≤the C.G. release mechanism. We are issuing this AD to prevent failure of the towing cable to disconnect, which could result in reduced or loss of control of the glider or the cable breaking and causing injury to people on the ground.

(f) Actions and Compliance

Unless already done, do the following actions before the next winch launch after April 23, 2019 (the effective date of this AD):

(1) Measure the distance between and parallelism of the deflector angles on the C.G. tow release by following paragraph 1 in the Action section of HPH spol.s r.o. Service bulletin No. G304 CZ—10 a), G304 CZ–17—10 a), G304 C—10 a), dated August 28, 2018 (co-published as one document).

(2) If the distance between the deflector angles is less than 36 mm, before the next winch launch, correct the distance by following paragraph 2 in the Action section of HPH spol.s r.o. Service bulletin No. G304 CZ—10 a), G304 CZ–17—10 a), G304 C—10 a), dated August 28, 2018 (co-published as one document).

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Policy and Innovation Division, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA, or the European Aviation Safety Agency (EASA).

(h) Related Information

Refer to MCAI EASA AD No. 2018–0207–E, dated September 19, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0202.

(i) Material Incorporated by Reference

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

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

(i) HPH spol.s r.o. Service bulletin No. G304 CZ—10 a), G304 CZ–17—10 a), G304 C—10 a), dated August 28, 2018 (co-published as one document).

(ii) [Reserved]

(3) For HPH s. r.o. service information identified in this AD, contact HPH, spol.s r.o., Čáslavská 234, 284 01 Kutná Hora, Czech Republic; phone: +420 327 513 441; email: *info@hph.cz;* internet: *www.hph.cz.*

(4) You may view this service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2019–0202.

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

Issued in Kansas City, Missouri, on March 25, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–06281 Filed 4–2–19; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AE73

Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending its regulations governing the minimum standards for a self-regulatory organization's (''SRO'') financial surveillance examination program of futures commission merchants (''FCMs''). The amendments revise the scope of a third-party expert's evaluation of the SRO's financial surveillance program to cover only the examination standards used by SRO staff in conducting FCM examinations. The amendments also extend the minimum timeframes from three years to five years between when an SRO must engage a third-party expert to evaluate its FCM examination standards for consistency with applicable auditing standards. The amendments should reduce the costs associated with the operation of a financial surveillance program, while also providing effective third-party evaluation of the FCM examination standards.

DATES: This rule is effective May 3, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew B. Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov*; Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov*; Joshua Beale, Associate Director, 202–418–5446, *jbeale@cftc.gov*; Jennifer Bauer, Special Counsel, 202–418–5472, *jbauer@cftc.gov*; or, Mark Bretscher, Special Counsel, 312–596–0592, *mbretscher@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background of SRO Oversight of FCMs

FCMs perform critical functions to facilitate the efficient operation of Commission-regulated exchange-traded derivatives markets.[1] In addition to

[1] An FCM is generally defined in CFTC Regulation 1.3 as (1) an entity that is engaged in

trading for their own accounts and carrying the accounts of their affiliates, FCMs are market intermediaries, standing between customers trading futures and swaps transactions on one side and designated contract markets (''DCMs''), swap execution facilities, and derivatives clearing organizations (''DCOs'') on the other side. As market intermediaries, FCMs carry customer accounts and hold customer funds to margin futures and cleared swap transactions. Additionally, FCMs fulfill daily settlement obligations on behalf of customers by posting sufficient funds to DCOs to support their customers' futures and swap positions, including paying mark-to-market losses associated with such positions. FCMs also are essential to the efficient operation of Commission-regulated markets in that they guarantee each customer's financial performance for futures and swap positions to DCOs by agreeing to use their own financial resources to cover any shortfall resulting from a customer default.[2]

The Commodity Exchange Act (''Act'') [3] recognizes the functions performed by FCMs and authorizes the Commission to adopt regulations to help ensure that they maintain the necessary financial resources to properly perform such functions.[4] Consistent with this statutory objective, the Commission has adopted regulations requiring FCMs to maintain a minimum level of regulatory capital,[5] to segregate customer funds from their own funds in specially designated customer accounts,[6] and to maintain appropriate risk management programs to monitor and manage the risks associated with their activities as FCMs.[7] The Commission also has imposed periodic financial reporting requirements on FCMs, which allows Commission staff to monitor their financial condition and compliance with regulatory obligations. The financial reporting requirements include daily statements demonstrating compliance with the segregation of customer funds requirements,[8] monthly unaudited and annual audited financial statements,[9] and regulatory notices upon the occurrence of specified events including failing to meet minimum capital requirements, failing to comply with segregation requirements, and failing to maintain current books and records.[10]

The Act also establishes a regulatory oversight structure that imposes an obligation on DCMs and registered futures associations (''RFAs''),[11] as SROs,[12] to perform frontline regulatory oversight of market intermediaries, including FCMs.[13] To further the objective of effective self-regulation of market participants and market professionals, the Act and Commission regulations require RFAs and DCMs to adopt financial and related reporting requirements for member FCMs, and to periodically examine FCMs for compliance with such requirements. In this regard, section 17(p) of the Act requires an RFA to establish and submit for Commission approval rules imposing minimum capital, segregation and other financial requirements applicable to its members for which such requirements are imposed by the Commission.[14] Section 17(p) further provides that the RFA must implement a program to audit and enforce compliance by its members with the RFA's minimum financial requirements.[15]

With respect to DCMs, section 5(d)(11)(B) of the Act and Regulation 38.600 require, in relevant part, each DCM to implement rules to ensure the financial integrity of any member FCM and the protection of customer funds.[16] DCMs also are required to monitor an FCM member's compliance with the DCM's minimum financial requirements by reviewing financial information filed with the DCM and by conducting periodic examinations of the FCM.[17]

In recognition of SROs as frontline regulators and the importance of FCM oversight, the Commission adopted Regulation 1.52 which establishes minimum standards that all SRO programs must satisfy in conducting FCM financial oversight. Regulation 1.52 requires each SRO (including NFA) to adopt rules prescribing minimum financial and related reporting requirements for member FCMs that are the same as, or more stringent than, the requirements imposed by the Commission.[18] Regulation 1.52 also requires each SRO to maintain a financial surveillance oversight program that includes detailed examinations of member FCMs' books and records to assess their compliance with SRO and Commission minimum financial and related reporting and recordkeeping requirements.[19]

Regulation 1.52 also permits two or more SROs to file a plan with the Commission to delegate primary, but not exclusive, responsibility to monitor and to examine the financial condition of an FCM that is a member of two or more SROs to a designated self-regulatory organization (''DSRO'').[20] The participating SROs form a Joint Audit Committee (''JAC'') and submit a Joint Audit Program to the Commission, which may approve such plan after providing an opportunity for public notice and comment.[21]

The delegation of an FCM that is a member of two or more SROs to a DSRO under a Joint Audit Program allows for a more efficient use of SRO resources, while also reducing burdens that otherwise would be imposed on an FCM from duplicative supervision, including periodic on-site examinations from multiple SROs. All SROs currently are members of a single JAC and operate

soliciting or accepting orders for the purchase or sale of any commodity for future delivery or a swap and, in connection with the solicitation and acceptance of such orders, accepts money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure futures or swaps transactions, or (2) an entity registered as an FCM.

Commission regulations referred to herein are found at 17 CFR chapter I, and are accessible on the Commission's website, *http://www.cftc.gov.*

[2] Regulation 39.16(c)(2)(vi).

[3] 7 U.S.C. 1 *et seq.*

[4] Section 4f(b) of the Act authorizes the Commission to adopt regulations imposing minimum capital and financial reporting requirements on FCMs to help ensure that they maintain adequate financial resources to meet their obligations.

[5] Regulation 1.17.

[6] Regulations 1.20, 22.2, and 30.7 impose segregation requirements for customer accounts containing futures positions, swap positions, and foreign futures positions, respectively.

[7] Regulation 1.11.

[8] Regulations 1.32, 22.2 and 30.7 require FCMs to prepare and submit to the Commission daily segregation computations and schedules for customer futures, cleared swaps and foreign futures accounts, respectively.

[9] Regulation 1.10.

[10] Regulation 1.12.

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

[12] An SRO is defined in Regulation 1.52 to include a contract market (as defined in Regulation 1.3) or an RFA under section 17 of the Act. The term ''SRO'' as defined in Regulation 1.52(a)(2), however, does not include a swap execution facility (as defined in Regulation 1.3).

[13] Section 3(b) of the Act provides in relevant part that it is the purpose of the Act to serve the public interest through a system of effective self-regulation of market participants and market professionals under the oversight of the Commission.

[14] Section 17(p)(2) of the Act.

[15] *Id.*

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

[17] *See* Regulations 38.600 through 38.605.

[18] Regulation 1.52(b)(1).

[19] Regulation 1.52(c)(1)(iv).

[20] Regulation 1.52(d)(1).

[21] Regulation 1.52(j).

pursuant to one Joint Audit Program approved by the Commission.[22]

B. Current Requirements of Commission Regulation 1.52

Regulation 1.52 requires each SRO or JAC to establish and operate a supervisory program that includes written policies and procedures concerning the examination of its member registrants (including FCMs). The purpose of the supervisory program is to assess whether each member registrant is in compliance with applicable SRO and Commission regulations governing net capital and related financial requirements, the obligations to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practices and other compliance requirements.[23] The supervisory program is required to address an SRO's or JAC's staffing levels and independence, ongoing surveillance of member registrants, procedures for identifying and monitoring high-risk firms, on-site examinations of registrants, and documentation of surveillance activities.[24]

The supervisory program as it relates to FCMs also is required to, at a minimum, incorporate FCM examination standards addressing: (1) The ethics of an examiner; (2) The independence of an examiner; (3) The supervision, review, and quality control of an examiner's work product; (4) The evidence and documentation to be reviewed and retained in connection with an examination; (5) The examination planning process; (6) Materiality assessment; (7) Quality control procedures to ensure that the examinations maintain the level of quality expected; (8) Communications between an examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the SRO of which the FCM is a member; (9) Communications between an examiner and an FCM's audit committee of the board of directors or similar governing body; (10) Analytical review procedures; (11) Record retention; and (12) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues.[25] All aspects of an SRO's supervisory program, including the FCM examination standards, must conform to auditing standards issued by the Public Company Accounting Oversight Board (''PCAOB'') as such standards would apply in the conduct of a non-financial statement audit.[26]

Regulation 1.52 also requires an SRO or JAC to engage an ''examinations expert'' to evaluate its supervisory program prior to its initial use, and to evaluate the SRO's or JAC's application of the supervisory program at least once every three years after its initial use.[27] For each evaluation, the SRO or JAC is required to obtain a written report from the examinations expert on its findings and recommendations. The written report is required to be issued under the consulting services standards of the American Institute of Certified Public Accountants (''AICPA''). The written report must include: (1) A statement that the examinations expert has evaluated the supervisory program (including its design to detect material weaknesses in an FCM's system of internal controls), including any comments and recommendations regarding such evaluation; (2) A statement that the examinations expert has evaluated the application of the supervisory program by the SRO, including any comments and recommendations in connection with such evaluation; and (3) A discussion containing recommendations of any new or best practices as prescribed by industry sources, including the AICPA and PCAOB.[28]

An SRO or JAC is required to provide the written report, including responses to any findings, comments, or recommendations made by the examinations expert, to the Commission within 30 days of receipt of the report. The SRO or JAC must commence applying the revised supervisory program, incorporating the examinations expert's findings, comments, and recommendations, once the Commission has advised the SRO or JAC, by written notice, that the Commission has no questions or comments on the written report.

C. Commission Initiative To Simplify and Modernize Regulations

Commission staff initiated an agency-wide internal review of CFTC regulations and practices in March 2017 to identify areas that could be simplified, to make them less burdensome and costly for market participants.[29] The Commission subsequently published in the **Federal Register** on May 9, 2017, a Request for Information soliciting suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and costly manner (*i.e.,* ''Project KISS'').[30]

The CME submitted suggestions on a variety of rules, regulations, and practices, including Regulation 1.52, in response to the Commission's Request for Information.[31] The CME expressed its view that the requirement in Regulation 1.52 for an SRO or JAC to engage an examinations expert at least once every three years does not provide any meaningful regulatory benefit.[32] The CME noted that under the current regulatory framework, Commission staff provides effective oversight of SRO and JAC FCM examination programs through the conduct of its rule enforcement reviews.[33] The CME further noted that it revises its FCM examination programs to incorporate any regulatory changes adopted by the Commission or SROs, and provides the actual FCM examination programs, with the revisions, to Commission staff for

[22] The current JAC Joint Audit Program assigns each FCM to either the CME Group (''CME'') or NFA as the FCM's DSRO. Accordingly, only the CME and NFA currently engage in routine, periodic on-site examinations of FCMs pursuant to the JAC agreement.

[23] Regulation 1.52(c)(1) for an SRO and Regulation 1.52(d)(2)(ii)(A)–(B) for a JAC.

[24] Regulation 1.52(c)(1) for an SRO and Regulation 1.52(d)(2)(ii)(A)–(B) for a JAC.

[25] Regulation 1.52(c)(2)(iii) for an SRO and Regulation 1.52(d)(2)(ii)(G) for a JAC.

[26] Regulation 1.52(c)(2)(ii) for an SRO and Regulation 1.52(d)(2)(ii)(F) for a JAC. The PCAOB is a nonprofit corporation established by Congress to oversee the audits of public companies in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports. The PCAOB also oversees the audits of brokers and dealers registered with the Securities and Exchange Commission (''SEC''). The PCAOB, however, is not vested with the authority to oversee the audits of FCMs.

[27] Regulation 1.52(c)(2)(iv) for an SRO and Regulation 1.52(d)(2)(ii)(I) for a JAC. An ''examinations expert'' is defined in Regulation 1.52(a) as a nationally recognized accounting and auditing firm with substantial expertise in the audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission.

[28] Regulation 1.52(c)(2)(iv)(A) for an SRO and Regulation 1.52(d)(2)(ii)(I)(1)–(4) for a JAC.

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

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

[31] Letter from Kathleen Cronin, Senior Managing Director, General Counsel and Corporate Secretary, CME Group, dated September 29, 2017 (''CME Project KISS Letter''), pp. 13–14. The CME Project KISS Letter is available at the Commission's website: *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61395.*

[32] *Id.*

[33] *Id.*

review at least once each year.[34] Accordingly, the CME suggested that the Commission eliminate the requirement for an SRO or JAC to engage an examinations expert once every three years to evaluate the SRO's or JAC's supervisory program.[35]

II. Proposed Amendments and Comments

A. The Proposal

On July 3, 2018, the Commission published for public comment a Notice of Proposed Rulemaking (''Proposal'')[36] to amend Regulation 1.52 to revise the scope and frequency of an examinations expert's evaluation of an SRO's or JAC's supervisory program, and to address certain non-substantive revisions to provide greater clarity and organization to the Regulation. The Proposal was initiated in response to both comments received from the Project Kiss initiative and knowledge gained through Commission staff's firsthand experience with the JAC's implementation of its initial FCM supervisory program pursuant to Regulation 1.52.[37]

In addition to requesting comment on proposed amendments to Regulation 1.52, the Commission also solicited comments on the impact of the Proposal on small entities, the Commission's cost-benefit considerations, and any anticompetitive effects of the Proposal. The comment period closed on September 4, 2018.

The Commission received comment letters from the JAC, NFA and CME concerning the Proposal.[38] The JAC, NFA and CME were supportive of the Commission's proposed amendments to revise the scope of the examinations expert's evaluation of the SRO or JAC supervisory program and to revise the minimum timeframes between when an SRO or JAC must engage an examinations expert to evaluate the SRO's or JAC's FCM examination standards for consistency with auditing standards issued by the PCAOB. The comments are discussed below.

1. Scope of the Examinations Expert's Evaluation of a Supervisory Program

Regulation 1.52 requires an SRO or JAC to engage an examinations expert to evaluate its supervisory program prior to its initial use and at least once every three years thereafter.[39] The examinations expert's evaluation is required to address the SRO's or JAC's application of its supervisory program, including the sufficiency of the supervisory program's risk-based approach and internal controls testing (including its design to detect material weaknesses in an FCM's internal control environment). The examinations expert is further required to evaluate whether the SRO's or JAC's FCM examination standards are consistent with auditing standards issued by the PCAOB as such standards would be applicable to a non-financial statement audit.

Regulation 1.52 also requires an SRO or JAC to obtain from the examinations expert for each evaluation a written report on findings and recommendations issued under AICPA consulting services standards. The report is required to include a statement that the examinations expert has evaluated the supervisory program, including the sufficiency of its risk-based approach and internal controls testing. The report also is required to include a statement that the examinations expert has evaluated the SRO's or JAC's application of the supervisory program.

The Commission proposed to amend Regulations 1.52(c)(2)(iv) and (d)(2)(ii)(I) to remove from the scope of the examinations expert's evaluation the SRO's or JAC's application of its respective supervisory program during periodic reviews and the analysis of the sufficiency of the supervisory program's risk-based approach, internal controls testing, and design to detect material weaknesses in internal controls during both the initial assessment of the SRO's or JAC's supervisory program and during subsequent periodic evaluations. Therefore, the Proposal limits the scope of the examinations expert's evaluation during both initial and subsequent periodic evaluations to an assessment of whether the SRO's and JAC's FCM examination standards are consistent with PCAOB audit standards as such standards would be applicable to a non-financial statement audit.

The CME, NFA and JAC each expressed strong support to revise the scope of the examinations expert's evaluation and written report during both the initial review and subsequent periodic reviews, to encompass only whether the FCM examination standards are consistent with applicable PCAOB auditing standards as such standards would be applied in a non-financial statement audit.[40] The CME and JAC each stated that with respect to the periodic evaluations, requiring the examinations expert to focus on any new or amended PCAOB auditing standards issued since the examinations expert's prior evaluation may enhance an SRO's or JAC's supervisory program.[41] NFA also stated that an examinations expert has expertise with respect to reviewing PCAOB auditing standards and can provide meaningful input to an SRO or JAC supervisory program regarding the consistency of the FCM examination standards with the PCAOB audit standards.[42]

Each of the commenters also stated, however, that an evaluation of the application of an SRO's or JAC's supervisory program was best performed by Commission staff. The JAC stated its belief that Commission staff has subject matter expertise and is best suited to evaluate, comment upon, and make recommendations regarding enhancements to the JAC's supervisory program and to assess its application against the Commission's own regulatory requirements.[43] NFA also stated that it agreed with the Commission's statement in the Proposal that Commission staff has the expertise in the application of CFTC regulations to operations of FCMs, and that Commission staff is appropriately situated to assess whether an SRO or

[34] *Id.*

[35] *Id.*

[36] Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations, 83 FR 31078 (July 3, 2018).

[37] Commission staff gained first-hand experience with the supervisory programs as staff participated in several meetings with the JAC (via the CME and NFA as the JAC's representatives) and its examinations expert to address issues and questions arising during the drafting of the initial FCM examination standards and examination programs. This interaction culminated with Commission staff approving the initial FCM examination standards and programs pursuant to delegated authority from the Commission in 2015. The examination standards and programs are now fully implemented and are used in each JAC examination of an FCM.

[38] The JAC comment letter was submitted by Debra K. Kokal, Executive Director, Financial and Regulatory Surveillance, CME Group, and Chairman of the Joint Audit Committee (''JAC Comment Letter''). The NFA comment letter was submitted by Carol A. Wooding, Vice President and General Counsel, National Futures Association (''NFA Comment Letter''). The CME comment letter was submitted by Sunil Cutinho, President, CME Clearing (''CME Comment Letter''). The comment file also includes submissions from United States Sharable and from Eric Alan Dela Pena, both of which did not include any discussion of the Proposal. All five submissions are available in the comment file on the Commission's website: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=2891.*

[39] Paragraphs (c)(2)(vi) and (c)(2)(iv) of Regulation 1.52, respectively, contain the requirement for an SRO to engage an examinations expert prior to the initial implementation of its supervisory program and at least once every three years thereafter. Paragraphs (d)(2)(ii)(H) and (I) of Regulation 1.52, respectively, contain the requirement for a JAC to engage an examinations expert prior to the initial implementation of its supervisory program and at least once every three years thereafter.

[40] CME Comment Letter, p. 1; NFA Comment Letter, p. 2; JAC Comment Letter, p. 1.

[41] CME Comment Letter, p. 1; JAC Comment Letter, p. 1.

[42] NFA Comment Letter, p. 2.

[43] JAC Comment Letter, p. 1.

JAC is accurately and properly applying Commission requirements to FCMs in the execution of the examination programs.[44] NFA further stated that it believes that the rule enforcement reviews currently performed by Commission staff of the NFA's financial surveillance program are similar in nature to the examinations expert's review required by Regulation 1.52 and provide effective and meaningful oversight of the NFA's application of its FCM supervisory program.[45] The CME stated that it agreed with the reasoning set forth in the Proposal revising the scope of the examinations expert's evaluation, and noted that the proposed amendment strikes the proper balance between reliance on the Commission's expertise in its oversight of an SRO's examination program and the expertise of an examinations expert in evaluating the consistency of the FCM examination standards with PCAOB audit standards.[46]

2. Frequency of the Examinations Expert's Evaluation of an SRO's or JAC's Supervisory Program

Regulation 1.52 currently requires an SRO or JAC to engage an examinations expert to evaluate its respective supervisory program prior to the initial implementation of the program, and at least once every three years thereafter.[47] The Commission proposed to amend the timeframes for an SRO or JAC to engage an examinations expert to conduct periodic evaluations subsequent to the initial implementation.[48] Specifically, the Commission proposed to amend Regulation 1.52 to require an SRO or JAC to review any new or amended auditing standards as such standards are issued by the PCAOB, and to revise its FCM examination standards promptly to reflect any changes that are applicable in the context of the SRO's or JAC's examination of FCMs.[49] The Proposal also requires the SRO or JAC to engage an examinations expert to evaluate any material revisions that the SRO or JAC makes to the examination standards to conform such standards with the new or amended PCAOB auditing standards. In addition, the Proposal requires the SRO or JAC to engage an examinations expert to evaluate the FCM examination standards in light of new or amended PCAOB auditing standards if such engagement is directed by the CFTC Director of the Division of Swap Dealer and Intermediary Oversight (''DSIO'').[50] The Commission further proposed to limit the maximum amount of time between an examinations expert's evaluation of an SRO's or JAC's FCM examination standards to no more than five years.[51]

At the conclusion of each review, the Proposal requires an SRO or JAC to obtain from the examinations expert a written report on findings and recommendations issued under the AICPA consulting services standards.[52] The SRO or JAC must provide a copy of the report to the DSIO Director, along with any written responses to any of the findings and recommendations in the report, within 30 days of the SRO's or JAC's receipt of the report. The SRO or JAC must commence applying the revised FCM examination standards upon receipt of a written notice from DSIO staff that it has no questions or comments on the revised FCM examination standards or the written report.

The CME, NFA, and JAC supported the proposed amendments to extend the maximum timeframe for an SRO or JAC to engage an examinations expert from three to five years.[53] The JAC and CME, however, requested that the Commission consider a maximum ten-year timeframe between examinations expert's reviews given the infrequency with which the PCAOB issues new or revised auditing standards, particularly auditing standards that apply in the context of a non-financial statement audit.[54] In support of their respective requests, the JAC and CME represented that the SEC has only approved two amendments to PCAOB auditing standards since the Commission adopted the FCM examination standards requirement in 2015, and neither of the two amendments have an impact on FCM examination standards for non-financial statement audits.[55]

The JAC, CME and NFA further expressed views that a longer maximum timeframe between required evaluations by an examinations expert was warranted given that the Proposal requires an SRO or JAC to review any new or amended audit standards issued by the PCAOB, to promptly make any necessary revisions to the FCM examinations standards resulting from such new or amended auditing standards, and to engage an examinations expert to evaluate material revisions made to the FCM examination standards.[56] The JAC, CME and NFA further stated that a regulatory provision providing for a maximum five-year timeframe between reviews by an examinations expert is not necessary as the Proposal authorizes the DSIO Director to require an SRO or JAC to engage an examinations expert at any time.[57] The JAC, CME and NFA also requested that if the Commission were to adopt a final rule that includes a requirement for an SRO or JAC to engage an examinations expert no less frequently than once every five years that the Commission also consider amending the Regulation to authorize the Director of DSIO to grant a waiver or otherwise provide relief from the requirement under appropriate circumstances, including situations where there are no new or revised auditing standards issued by the PCAOB during the five-year period since the prior examinations expert's review.[58]

Commenters also requested that the Commission confirm or clarify several aspects of the Proposal or existing Regulation 1.52. The JAC and CME requested that the Commission confirm that the proposed maximum five-year timeframe between an examinations expert's evaluation of the FCM examination standards is reset whenever an SRO or JAC engages an

[44] NFA Comment Letter, p. 2.

[45] *Id.*

[46] CME Comment Letter, p. 1.

[47] Regulations 1.52(c)(2)(iv) and (d)(2)(ii)(I) for an SRO and JAC, respectively.

[48] The Commission did not propose to amend the requirement that an SRO or JAC engage an examinations expert to evaluate its FCM examination standards at the initial implementation of its supervisory program.

[49] Proposed Regulation 1.52(c)(2)(iii)(B) for SROs and Regulation 1.52(d)(2)(ii)(G)(*2*) for JACs.

[50] Proposed Regulation 1.52(c)(2)(iii)(B) for SROs and Regulation 1.52(d)(2)(ii)(G)(*2*) for JACs.

[51] Proposed Regulation 1.52(c)(2)(iii)(A) for SROs and Proposed Regulation 1.52(d)(2)(ii)(G)(*1*) for JACs.

[52] Proposed Regulation 1.52(c)(2)(iii)(C) for SROs and Proposed Regulation 1.52(d)(2)(ii)(G)(*3*) for JACs.

[53] CME Comment Letter, pp. 1–2; NFA Comment Letter, p. 3; JAC Comment Letter, p. 1.

[54] JAC Comment Letter, p. 1; CME Comment Letter, p. 2.

[55] JAC Comment Letter, p. 1; CME Comment Letter, p. 2. NFA also stated that the SEC has approved only two amendments to PCAOB audit standards since 2015 and both of the amendments do not apply to FCM examination standards. NFA Comment Letter, p. 3. Section 107(b) of the Sarbanes Oxley Act of 2002 generally requires the SEC to approve PCAOB rules prior to their implementation.

[56] JAC Comment Letter, p. 2; CME Comment Letter, p. 2.; NFA Comment Letter, p. 3. NFA further stated that it envisions that the only situation in which it would have to engage an examinations expert once every five years is if there are no changes to the PCAOB standards during the previous five years that impact the FCM examination standards. The NFA believes that such a requirement is unduly burdensome and costly. NFA Comment Letter, pp. 3–4.

[57] JAC Comment Letter, p. 2; CME Comment Letter, p. 2; NFA Comment Letter, pp. 3–4.

[58] JAC Comment Letter, p. 2; CME Comment Letter, p. 2; NFA Comment Letter, pp. 3–4. The JAC and CME also requested that the Commission continue to monitor the adoption of auditing standards by the PCAOB and consider eliminating the requirement for an examinations expert to perform evaluations in a future rulemaking.

examinations expert.[59] The JAC and CME also noted that the regulation requires that all aspects of the supervisory program must conform to auditing standards issued by the PCAOB as such standards would be applicable to a non-financial audit. The JAC and CME requested confirmation that when auditing standards of the PCAOB are referenced in Regulation 1.52, it is the standards that would be applicable to a non-financial statement audit.[60]

3. Technical Amendments to Regulation 1.52

The Proposal includes several technical amendments to Regulation 1.52 to eliminate redundancies and to simplify the intent of the Regulation. Specifically, the Commission proposed to consolidate the examination standards required to be included in an SRO supervisory program that are currently listed in paragraphs (c)(2)(ii) and (iii) into a single revised paragraph (c)(2)(ii) of Regulation 1.52. The Commission further proposed to amend paragraphs (d)(2)(ii)(F) and (d)(2)(ii)(G) of Regulation 1.52, which sets forth the examination standards required of a JAC supervisory program, to be consistent with, and to incorporate by cross-reference, the SRO examination standards contained in revised paragraph (c)(2)(ii) of Regulation 1.52. The Commission did not receive any comments on the proposed amendments to paragraphs (c)(2)(ii), (d)(2)(ii)(F)–(G) of Regulation 1.52.

III. Final Rules

The Commission has considered the comments received and is adopting the amendments to Regulation 1.52 as proposed, with minor changes discussed below.

A. Scope of the Examinations Expert's Evaluation of a Supervisory Program

Amended Regulation 1.52 revises the scope of the examinations expert's initial and ongoing evaluations of an SRO's or JAC's supervisory program to encompass only an evaluation of whether the supervisory program's FCM examination standards are consistent with auditing standards issued by the PCAOB as such auditing standards would be applied to a non-financial statement audit. Accordingly, amended Regulation 1.52 will not require an SRO or JAC to engage an examinations expert to evaluate the sufficiency of the supervisory program's risk-based approach or internal controls testing, including the program's design to detect material weaknesses in an FCM's internal control environment. Amended Regulation 1.52 also will not require an SRO or JAC to engage an examinations expert to evaluate the SRO's or JAC's application of the supervisory program.

Amended Regulation 1.52 continues to require an SRO or JAC to obtain from the examinations expert a written report on findings and recommendations issued under AICPA consulting services standards as part of both the initial and periodic, ongoing evaluations of the SRO's or JAC's supervisory program. Consistent with the amendments to the scope of the examinations expert's evaluation, the written report is required to address the consistency of the supervisory program's FCM examination standards with auditing standards issued by the PCAOB, as such standards would be applied in a non-financial statement audit. The written report is no longer required to include statements regarding the examinations expert's evaluation of the sufficiency of the supervisory program's risk-based approach and internal control testing. The written report also is no longer required to include an analysis of the supervisory program's design to detect material weaknesses in an FCM's internal control environment. The written report also is required to be provided to the Director of DSIO.[61]

As noted in the Proposal, the Commission initially adopted the requirement for an examinations expert to evaluate an SRO's or JAC's application of its supervisory program, including ongoing assessments of the sufficiency of the SRO's or JAC's internal controls testing, to address concerns that a third-party assessment was necessary due to limited Commission resources and expertise to perform a comparable periodic evaluation. Commission staff subsequently worked closely with both the CME and NFA in the development of their initial supervisory programs and has determined that it has sufficient resources and expertise to effectively oversee the application of SRO and JAC supervisory programs. In this regard, Commission staff ultimately approved the JAC's initial supervisory program in 2015, including the supervisory program's FCM examination standards and detailed examination programs. Commission staff also has performed routine scheduled oversight reviews of both the CME's and NFA's application of their respective supervisory programs since their initial approvals in 2015, including their internal controls testing at member FCMs. Commission staff also routinely reviews the JAC examination programs to assess their sufficiency in examining FCMs' compliance with Commission and SRO financial, reporting, and general operational requirements, as well as their sufficiency in assessing the effectiveness of the internal controls at an FCM. Therefore, although the size of the relevant staff has remained relatively constant since 2015, the Commission believes that it has the appropriate expertise to provide the level of supervision necessary to assess an SRO's or JAC's application of its respective supervisory program.

B. Frequency of the Examinations Expert's Evaluation of an SRO's or JAC's Supervisory Program

The Commission is amending Regulation 1.52 to adopt a risk-based approach to determine the required frequency of an examinations expert's evaluation of an SRO's or JAC's supervisory program. Amended Regulation 1.52 requires an SRO or JAC to review new or amended auditing standards as such standards are issued by the PCAOB, and to revise its FCM examination standards promptly to reflect any changes that are applicable in the context of the SRO's or JAC's examination of FCMs. The final amendments also require the SRO or JAC to engage an examinations expert to evaluate any material revisions that the SRO or JAC makes to the examination standards to conform such standards with the new or amended PCAOB auditing standards. In addition, the final amendments require the SRO or JAC to engage an examinations expert to evaluate the FCM examination standards in light of new or amended PCAOB auditing standards whenever such engagement is directed by the Director of DSIO. The Commission also is amending Regulation 1.52 to revise from three to five years the maximum period of time that an SRO or JAC may operate its supervisory program without engaging an examinations expert to evaluate its FCM examination standards for consistency with PCAOB auditing standards as such standards would apply to a non-financial statement audit.

As noted in the Proposal, the Commission believes that the examinations expert's evaluation provides an important oversight mechanism whereby an independent third-party that has expertise in the application of PCAOB auditing standards can assess an SRO's or JAC's FCM examination standards for

[59] JAC Comment Letter, p. 2; CME Comment Letter, p. 3.

[60] JAC Comment Letter, p. 2; CME Comment Letter, p. 3.

[61] As stated in the Proposal, DSIO will provide the written report to the Commission on an informational basis.

consistency with such PCAOB auditing standards. The Commission further believes that the FCM examination standards should be reviewed and revised promptly whenever the PCAOB issues new or amended auditing standards, and an SRO or JAC should engage an examinations expert to review any material revisions made to the FCM examination standards instead of waiting for the next scheduled review under a three-year cycle. The provision providing the Director of DSIO with the authority to direct an SRO or JAC to engage an examinations expert to evaluate its FCM examination standards for consistency with PCAOB audit standards is intended to ensure that an independent third-party assessment is performed whenever material revisions are made to the FCM examination standards. Accordingly, the third-party assessment may be initiated either by the SRO/JAC or by the DSIO Director, if necessary. Lastly, the amended regulation provides that an SRO or JAC must engage an examinations expert to evaluate its FCM examination standards if it has not engaged an examinations expert to perform such an evaluation within the last five years.

The Commission considered the comments received in adopting the final amendments. The Commission does not believe that it is appropriate at this time to extend the maximum timeframe between examinations expert's evaluations to once every 10 years as suggested by the JAC and CME. Nor does the Commission believe that the provision granting the Director of DSIO the authority to direct an SRO or JAC to engage an examinations expert supports the elimination of a maximum five-year timeframe from the regulation as suggested by the JAC, CME and NFA.

The requirement that an SRO or JAC engage an examinations expert is a new requirement that was adopted in 2013. While the NFA and CME have engaged an examinations expert to assist them with the development of their initial supervisory programs, including assisting them with developing FCM examinations standards that are consistent with applicable PCAOB auditing standards, neither the NFA nor CME has gone through the process of engaging an examinations expert to perform an evaluation subsequent to the initial approval. As noted above, both the Commission and commenters recognize the benefits that an examinations expert may provide by evaluating the FCM examination standards. The Commission believes that a maximum five-year period of time between evaluations provides a more appropriate balance between the costs of engaging the examinations expert and the benefit provided by the independent evaluation of the FCM examination standards than a 10-year timeframe.

The Commission also acknowledges the infrequent nature by which the PCAOB issues new or amended auditing standards, and the Commission recognizes that the PCAOB has not issued new or amended auditing standards that are applicable to an SRO or JAC examination of an FCM since the NFA and CME supervisory programs were initially adopted. The Commission believes, however, that existing regulations provide an appropriate mechanism for an SRO or JAC to seek regulatory relief from the requirement to engage an examinations expert in situations where the PCAOB has been relatively inactive in issuing new or amended auditing standards during the previous five-year period. In such situations, an SRO or JAC may seek regulatory relief, including requesting a no-action position from Commission staff pursuant to Regulation 140.99.[62]

As noted above, the Commission is adopting the amendments to Regulations 1.52(c)(2)(iii) and 1.52(d)(2)(G) setting forth a requirement that an SRO and JAC, respectively, engage an examinations expert at least once every five years as proposed. The Commission also is setting the starting date of the five-year period to coincide with the effective date of the final amendments to Regulation 1.52. In addition, the Commission confirms that the five-year timeframe is restarted whenever an SRO or JAC engages an examinations expert to evaluate its FCM examination standards.[63] The restart date for the running of the five-year period shall be the date on which DSIO staff provides written notice to an SRO pursuant to Regulation 1.52(c)(2)(iii)(C) or a JAC pursuant to Regulation 1.52(d)(2)(ii)(G)(*3*) that DSIO staff has no further comments or questions on the revised examination standards.

C. Technical Amendments to Regulation 1.52

The proposed technical amendments consolidate in Regulation 1.52(c)(2)(ii) the FCM examination standards required to be included in an SRO supervisory program that are currently listed in paragraphs (c)(2)(ii) and (iii) of Regulation 1.52. The technical amendments also revise paragraphs (d)(2)(ii)(F) and (d)(2)(ii)(G) of Regulation 1.52, which sets forth the FCM examination standards required of a JAC supervisory program, to be consistent with, and to incorporate by cross-reference, the SRO examination standards contained in amended paragraph (c)(2)(ii) of Regulation 1.52.

The Commission did not receive any comments regarding the proposed technical amendments. The Commission is adopting the technical amendments as proposed.

D. Additional Comments

The Commission also received several comments that addressed issues in addition to the scope and frequency of the examinations expert's evaluation of FCM examination standards. The CME and JAC noted in their respective comment letters that current Regulation 1.52(d)(2)(iii)(B)(*6*) provides that JAC members must consider issuing ''risk alerts'' to both FCMs and DSRO examiners on an as needed basis as issues arise.[64] The CME and JAC stated that the requirement to consider issuing risk alerts to DSRO staff examiners is not necessary and requested that the requirement be eliminated.[65]

The CME and JAC also commented that Regulation 1.52(d)(2)(ii)(E) requires a JAC supervisory program to, among other requirements, ''address all areas of risk to which an FCM can reasonably be foreseen to be subject to.'' [66] The CME and JAC stated that this provision is vague and overly broad, and further noted that such requirements are addressed in Regulation 1.11, which imposes an enterprise risk management requirement on FCMs. The CME and JAC requested that Regulation 1.52 be amended to remove the requirement.

In addition, the CME noted that Regulation 1.52(k) requires an SRO to provide the Commission with notice when an FCM, a registered retail foreign exchange dealer, or a registered introducing broker ceases to be a member in good standing of the SRO.[67] The CME stated that CME members include both clearing members, which are subject to the supervisory procedures specified in Regulation 1.52, and ''corporate members'', which may include FCMs, retail foreign exchange dealers, and introducing brokers that are

[62] The availability of regulatory relief under Regulation 140.99 also negates the need for Regulation 1.52 to include a provision providing the Director of DSIO the authority to issue waivers from requirement for an SRO or JAC to engage an examinations expert.

[63] The scope of the examinations expert's review shall ensure that each FCM examination standards is assessed for consistency with new or revised PCAOB auditing standards issued since the most recent review.

[64] CME Comment Letter, p. 2; JAC Comment Letter, p. 3.

[65] CME Comment Letter, p. 3; JAC Comment Letter, p. 2.

[66] CME Comment Letter, p. 3; JAC Comment Letter, pp. 2–3.

[67] CME Comment Letter, p. 3.

not clearing members and are subject to NFA as their DSRO. The CME requested that Regulation 1.52(k) be amended to clarify that NFA is responsible for providing the notice on the status of such corporate members not being in good standing of the SRO.

Each of the comments above are beyond the scope of the Commission's Proposal and the Commission has determined not to amend Regulation 1.52 to address these issues at this time. The Commission, however, understands that with respect to Regulation 1.52(k), that DSRO responsibilities are allocated amongst SROs pursuant to the Joint Audit Plan, and Regulation 1.52 does not prohibit NFA from being the DSRO of FCMs, retail foreign exchange dealers, or introducing brokers that are corporate members of an SRO that may be a designated contract market. Accordingly, the CME is not obligated to file a notice with the Commission under Regulation 1.52(k) if an FCM, retail foreign exchange dealer, or introducing broker solely terminated its corporate membership in the CME. The Commission would expect, however, that if an SRO is aware of a regulatory issue with a corporate member that may indicate that the corporate member is not complying with Commission or SRO regulations, that the SRO would communicate such concerns to the appropriate DSRO for further review consistent with the terms and intent of the Joint Audit Plan and Regulation 1.52.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [68] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[69] The proposed regulations would affect designated contract markets.

The Commission has previously determined that designated contract markets are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to designated contract markets.[70] Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

As the Commission stated in the Proposal, this rulemaking does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act (''PRA''). All recordkeeping or information collection requirements relevant to the subject of this rulemaking, or discussed herein, already exist under current law. The title for this collection of information is Core Principles & Other Requirements for DCMs, OMB control number 3038–0052. The Commission invited public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the Proposed Amendment. The Commission did not receive any comments that addressed whether additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the adoption of the Proposal. Nevertheless, the Commission notes that the final rule will reduce the current burden estimate of OMB control number 3038–0052. Accordingly, the Commission will, by separate action, publish in the **Federal Register** a notice and request for comment on the amended PRA burden associated with the final rule, and submit to OMB an information collection request to amend the information collection, in accordance with 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d).

The collections contained in this rulemaking are mandatory collections. In formulating burden estimates for the collections in this rulemaking, to avoid double accounting of information collections that already have been assigned control numbers by OMB, or are covered as burden hours in collections of information pending before OMB, the PRA analysis provided in the rulemaking, along with the information collection request (''ICR'') with burden estimates that were incorporated into the rulemaking by reference and submitted to OMB, accounted only burden estimates for collections of information that have not previously been submitted to OMB. As such, the final rules do not impose any new burden or any new information collection requirements in addition to those that already exist.

C. Cost Benefit Considerations

1. Introduction

Section 15(a) of the Act requires the CFTC to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders.[71] Section 15(a) of the Act further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below.

Where reasonably feasible, the CFTC endeavors to estimate quantifiable costs and benefits. Where quantification is not feasible, the CFTC identifies and describes costs and benefits qualitatively.

The commentators to the CFTC's Proposal gave no negative comments on the costs and benefits associated with the rule amendments. Indeed, commentators were supportive of the CFTC's Proposal, in part due to reduced costs and reduced complexity that the rule changes would introduce.

2. Economic Baseline

The CFTC's economic baseline for the rule amendment analysis is the requirements of Regulation 1.52 that currently exist prior to taking into account the final amendments. Specifically, current Regulation 1.52 requires an SRO or a JAC to engage an examinations expert to evaluate its supervisory program prior to its initial use, and to evaluate the SRO's application of the supervisory program at least once every three years after its initial use.

The Commission's rulemaking will not alter the requirement for an SRO or JAC to engage an examinations expert to evaluate its supervisory program prior to the initial use of the supervisory program. The Commission, however, is eliminating the requirement that the examinations expert must review the SRO's or JAC's ongoing application of its supervisory program during periodic reviews and the analysis of the supervisory program's design to detect material weaknesses in internal controls during both periodic reviews and the initial review prior to the program's initial use as such requirement is not

[68] 5 U.S.C. 601 *et seq.*

[69] 47 FR 18618 (Apr. 30, 1982).

[70] *Id.* at 18619.

[71] 7 U.S.C. 19(a).

necessary due to Commission staff performing comparable reviews on a routine, periodic basis as discussed below. The Commission also is revising the frequency of when an SRO or a JAC must engage an examinations expert, as discussed below.

The Commission's elimination of the requirement that an examinations expert evaluate an SRO's or a JAC's application of its supervisory program and the program's design to detect material weaknesses in internal controls will reduce costs related to conducting such review. However, the rulemaking will not substantially reduce the benefits obtained from an evaluation of the SRO's and JAC's supervisory program, including internal controls, as such reviews are performed by Commission staff on a routine basis. Commission staff evaluates the SRO's or JAC's execution of its supervisory program, including performing detailed reviews of SRO and JAC examination work papers, to assess the adequacy of the scope of the work performed by SRO and JAC staff members and to determine whether the conclusions reached by SRO and JAC staff members are supported by the work performed. Commission staff also reviews at least annually all SRO and JAC examination programs for conducting examinations of FCMs to assess the completeness of such programs and to determine that such programs properly reflect any regulatory updates, including rule amendments, adopted since the Commission staff's previous review of the examination programs. Reviews of execution and completeness of supervisory programs for FCMs occur no less frequently than annually. Furthermore, Commission staff has a particular expertise in assessing and reviewing whether registrants are in compliance with Commission regulatory requirements that makes a third-party review redundant.

The final amendments will continue to require that an examinations expert review the FCM examination standards contained in the supervisory program for consistency with PCAOB auditing standards as such standards apply to a non-financial statement audit. The Commission recognizes that examinations experts have a particular expertise in the application of PCAOB auditing standards and can effectively evaluate whether SRO and JAC FCM examination standards are consistent with such auditing standards. The Commission, however, is revising the timeframe for such reviews. Currently, Regulation 1.52 requires an SRO or JAC to engage an examinations expert at least once every three years to perform such a review. The Commission is amending Regulation 1.52 to require an SRO or JAC to engage an examinations expert whenever the PCAOB issues new or revised auditing standards that are material to the SRO's or JAC's examination of member FCMs.

The examinations expert's review, however, is limited to only the new or revised PCAOB auditing standards that have been issued since the most recent prior review that are applicable to the SRO's or JAC's examination of FCMs. Accordingly, the examinations expert will not have to review all of the SRO's or JAC's FCM examination standards for consistency with PCAOB audit standards. The amendments further require an SRO or JAC to engage an examinations expert at least once every five years even if the SRO or JAC determines that the PCAOB did not issue new or revised auditing standards during the previous five-year period that are material to its examinations of member FCMs. Based on past experience, the Commission anticipates that the adoption of new or revised auditing standards that are material to examination standards applicable to FCMs will be infrequent and, therefore, the triggering of an examinations expert review will also likely be an infrequent event.[72] Finally, the amendments provide that an SRO or JAC must engage an examinations expert if directed to by the Director of the Division of Swap Dealer and Intermediary Oversight.[73]

The amendments to Regulation 1.52 are intended to streamline the process under which examinations experts conduct their reviews and the time period between those reviews. The Commission believes that these amendments will make conducting the reviews more efficient and less costly, while also continuing to provide the benefit the Commission and public obtain from an independent assessment that SROs and JACs use appropriate FCM examinations standard in the conduct of the oversight of their member FCMs, which perform critical functions in both the operation of the futures markets and in the protection of customer funds.

The Commission does not anticipate that there will be any significant increase in costs associated with the amendments. By narrowing the intended scope of examination reviews from an evaluation of the supervisory program to an assessment of the examinations standards for conformity with auditing standards established by the PCAOB as they apply to FCM examinations, the Commission is purposely limiting the scope of the examinations expert's review. The Commission anticipates that this limitation, coupled with extending the time period between examinations experts' reviews, will reduce costs associated with engaging and hiring an examinations expert.[74] Nonetheless, the Commission believes that these amendments are appropriately calibrated to ensure the integrity of the SRO and JAC supervisory programs and continued oversight over the minimum financial requirements at FCMs. As noted, Commission staff reviews no less frequently than annually all SRO and JAC examination programs and reviews on a routine and periodic basis the SRO' and JAC's application of their supervisory programs. The Commission anticipates that its staff will continue to perform such reviews as part of its routine oversight of SROs and JACs. These Commission staff reviews will continue to provide the benefits that have been associated with the examinations experts' reviews.

3. CEA Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that these amendments maintain the current level of protections of market participants and the public provided by the current regulation. The amendments continue to protect market participants and the public by ensuring that there is sufficient oversight over the minimum financial requirements at FCMs. As noted, the Commission believes that Commission staff is well-equipped to provide reviews that will no longer be provided by outside examinations experts and Commission staff intends to continue to conduct such reviews.

[72] Since 2016 PCAOB has adopted and the SEC has approved approximately two new standards, neither of which had a significant impact on the examination standards applicable to FCMs. See PCAOB website available at: *https://pcaobus.org/Standards/Pages/Current_Activities_Related_to_Standards.aspx.*

[73] For example, in circumstances where an SRO or JAC has not engaged an examinations expert yet DSIO staff believes a material change to PCAOB auditing standards warrants such engagement.

[74] In 2013, the Commission found that it was not feasible to quantify any costs associated with utilizing an examinations expert, largely because several nationally recognized accounting firms expressed their reluctance to provide such information. *See,* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR, 68506, 68605 (Nov. 14, 2013). While it is also not feasible to quantify such costs for the use of an examinations expert under the final amendments, such costs are likely much less than the costs under the existing rule.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that Regulation 1.52 as amended will continue to help ensure that FCMs can meet their financial and operational obligations to both customers and DCOs, which, along with the Commission's ongoing reviews, will continue to foster the efficiency and financial integrity of markets. The Commission has not identified any effect of Regulation 1.52 on the competitiveness of derivatives markets.

c. Price Discovery

The Commission has not identified any material effect of the amendments on the price discovery process in futures and swap markets.

d. Sound Risk Management Practices

The Commission believes that Regulation 1.52 as amended, along with the Commission's ongoing reviews, will continue to help ensure that FCMs can meet their financial and operational obligations to both customers and DCOs, which should continue to foster sound risk management practices.

e. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations associated with the amendments.

f. Consideration of Alternatives

The Commission considered several alternative approaches that were specified in the comments. In this regard, the Commission considered the CME's suggestion to fully eliminate the requirement that a third-party examinations expert perform periodic evaluations and assessments of an SRO's program to oversee its member FCMs' compliance with financial and related reporting requirements.[75] The Commission has elected to maintain the requirement for a third-party examinations expert. The Commission, however, has further decided to eliminate the requirement that the examinations expert periodically review the SRO's or JAC's ongoing application of its supervisory program as Commission staff routinely perform such reviews. The Commission further elected to maintain the examinations expert's required reviews of an FCM's examinations standards at a modified interval. As noted previously, FCMs perform significant market functions, including holding customer funds and guaranteeing customers' financial performance to DCOs. The effective operation of these functions is necessary for the efficient operation of the futures markets. The Commission believes that the SRO or JAC examination program is a critical component of the overall process for determining an FCM's compliance with regulatory requirements and the FCM's ability to fulfill its financial obligations. The Commission further believes that examinations experts have a particular expertise in PCAOB auditing standards and can effectively and efficiently evaluate whether SRO or JAC FCM examination standards are consistent with such PCAOB auditing standards, which will help ensure that the SRO and JAC examinations satisfy industry standards for effective FCM audits.

The Commission also considered the CME's and JAC's suggestion that an SRO or JAC should be required to engage an examinations expert at least once every ten years as opposed to the Commission's proposal of once every five years.[76] The Commission further considered the NFA's request that the Commission consider whether a set time period between reviews is even necessary given that the Director of DSIO is authorized to direct an SRO or JAC to engage an examinations expert at any time.[77]

As noted immediately above, the Commission believes that there are significant benefits to customers, market participants, clearing organizations, and the futures industry in general from SRO or JAC supervisory programs that assess FCMs' compliance with SRO and CFTC regulatory requirements. Such SRO and JAC reviews help ensure that FCMs have the operational and financial capacity to meet their obligations as market intermediaries, which is necessary for efficient markets. The Commission further believes that such reviews should be performed at least once every five years (and also when there are material and relevant changes in PCAOB auditing standards) as required by the amendments. While, as noted, Commission staff is well-equipped to review the ongoing application of SRO and JAC supervisory programs and intends to continue to do so at least annually, the Commission believes that examinations experts are best equipped to perform evaluations of examination standards for conformity with auditing standards established by the PCAOB as they apply to non-financial statement audits.

The Commission believes that a ten-year time period between examinations experts' reviews is not appropriate at the current time given that an SRO or JAC has not gone through an examinations expert's review since the adoption of the initial requirements in 2013. While the Commission recognizes that the final rule authorizes the director of DSIO to instruct an SRO or JAC to engage an examinations expert any time the PCAOB issues new or amended auditing standards, the Commission believes that it should gain further experience with the operation of the rule and develop a more thorough understanding of both the costs and benefits associated with the examinations experts review before considering amending the rule to expand the maximum period of time between such reviews from five to ten years. The Commission further notes that in the event that there are no changes in PCAOB auditing standards that would materially impact FCM examination standards, SROs and JACs may use existing processes for seeking regulatory relief under Regulation 140.99 if they believe such relief is warranted based upon the facts and circumstances.

The Commission also considered maintaining the current rule, but the Commission anticipates that the amendments will significantly reduce costs to SROs and JACs without materially impacting benefits.

D. Anti-Trust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[78]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission has considered the amendments to Regulation 1.52 and comments received to determine whether it is anticompetitive and has identified no anticompetitive effects.

Because the Commission has determined that the amendments to Regulation 1.52 are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

[75] CME Comment Letter, p. 2.

[76] CME Comment Letter, p. 2; JAC Comment Letter, p. 1.

[77] NFA Comment Letter, p. 3.

[78] 7 U.S.C. 19(b).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6*o,* 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Amend § 1.52 as follows:

■ a. Revise paragraphs (c)(2)(ii) through (v);

■ b. Remove paragraphs (c)(2)(vi) and (vii);

■ c. Revise paragraphs (d)(2)(ii)(F) through (I);

■ d. Remove paragraphs (d)(2)(ii)(J) and (K); and

■ e. Revise paragraph (d)(2)(iii).

The revisions read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

* * * * *

(c) * * *

(2) * * *

(ii) The supervisory program must, at a minimum, have examination standards addressing the following:

(A) The ethics of an examiner;

(B) The independence of an examiner;

(C) The supervision, review, and quality control of an examiner's work product;

(D) The evidence and documentation to be reviewed and retained in connection with an examination;

(E) The sampling size and techniques used in an examination;

(F) The examination risk assessment process;

(G) The examination planning process;

(H) Materiality assessment;

(I) Quality control procedures to ensure that the examinations maintain the level of quality expected;

(J) Communications between an examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the self-regulatory organization of which the futures commission merchant is a member;

(K) Communications between an examiner and a futures commission merchant's audit committee of the board of directors or other similar governing body;

(L) Analytical review procedures;

(M) Record retention; and

(N) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues. The examination report is intended solely for the information and use of the self-regulatory organizations and the Commission, and is not intended to be and should not be used by any other person or entity.

(iii)(A) Prior to the initial implementation of the supervisory program, a self-regulatory organization must engage an examinations expert to evaluate the examination standards for consistency with auditing standards issued by the Public Company Accounting Oversight Board as such auditing standards are applicable in the context of the self-regulatory organization's examination of its futures commission merchant members. At least once every five years after the initial implementation of the supervisory program, a self-regulatory organization must engage an examinations expert to evaluate the examination standards for consistency with any new or amended auditing standards issued by the Public Company Accounting Oversight Board since the previous review performed by the examinations expert. At the conclusion of each evaluation, a self-regulatory organization must obtain a written report from the examinations expert in accordance with paragraph (c)(2)(iii)(C) of this section.

(B) Notwithstanding paragraph (c)(2)(iii)(A) of this section, a self-regulatory organization must review any new or amended auditing standards issued by the Public Company Accounting Oversight Board, and must revise its examination standards promptly to reflect any changes in such auditing standards that are applicable in the context of the self-regulatory organization's examination of its futures commission merchant members. A self-regulatory organization must engage an examinations expert to evaluate any material revisions that the self-regulatory organization makes to the examination standards to conform such standards with the Public Company Accounting Oversight Board's auditing standards, or if directed to engage an examinations expert by the Director of the Division of Swap Dealer and Intermediary Oversight. At the conclusion of each review, a self-regulatory organization must obtain a written report from the examinations expert in accordance with paragraph (c)(2)(iii)(C) of this section.

(C) At the conclusion of the examinations expert's engagement pursuant to paragraph (c)(2)(iii)(A) or (B) of this section, the self-regulatory organization must obtain from the examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants. The self-regulatory organization must provide the Director of the Division of Swap Dealer and Intermediary Oversight with a copy of the examinations expert's written report, and the self-regulatory organization's written responses to any of the examinations expert's findings and recommendations, within thirty days of the receipt thereof. Upon resolution of any questions or comments raised by the Division of Swap Dealer and Intermediary Oversight, and upon written notice from the Division of Swap Dealer and Intermediary Oversight that it has no further comments or questions on the examinations standards as amended (by reason of the examinations expert's proposals, consideration of the Division of Swap Dealer and Intermediary Oversight's questions or comments, or otherwise), the self-regulatory organization shall commence applying such examinations standards for examining its registered futures commission merchant members for all examinations conducted with an ''as of'' date later than the date of the Division of Swap Dealer and Intermediary's written notification.

(iv) The supervisory program must require the self-regulatory organization to report to its risk and/or audit committee of the board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the supervisory program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(v) The examinations expert's written report, the self-regulatory organization's response, if any, as well as any information concerning the supervisory program is confidential.

(d) * * *

(2) * * *

(ii) * * *

(F) The Joint Audit Program must include examination standards addressing the items listed in paragraph (c)(2)(ii) of this section.

(G)(*1*) Prior to the initial implementation of the Joint Audit Program, the Joint Audit Committee must engage an examinations expert to evaluate the examination standards for consistency with auditing standards issued by the Public Company Accounting Oversight Board as such auditing standards are applicable in the context of the Joint Audit Committee's

examination of its futures commission merchant members. At least once every five years after the initial implementation of the Joint Audit Program, the Joint Audit Committee must engage an examinations expert to evaluate the examination standards for consistency with any new or amended auditing standards issued by the Public Company Accounting Oversight Board since the previous review performed by the examinations expert. At the conclusion of each review, the Joint Audit Committee must obtain a written report from the examinations expert in accordance with paragraph (d)(2)(ii)(G)(*3*) of this section.

(*2*) Notwithstanding paragraph (d)(2)(ii)(G)(*1*) of this section, the Joint Audit Committee must review any new or amended auditing standards issued by the Public Company Accounting Oversight Board, and must revise its examination standards promptly to reflect any changes in such auditing standards that are applicable in the context of the Joint Audit Committee's examination of its futures commission merchant members. The Joint Audit Committee must engage an examinations expert to evaluate any material revisions that the Joint Audit Committee makes to the examination standards to conform such standards with the Public Company Accounting Oversight Board's auditing standards, or if directed to engage an examinations expert by the Director of the Division of Swap Dealer and Intermediary Oversight. The Joint Audit Committee must obtain a written report from the examinations expert in accordance with paragraph (d)(2)(ii)(G)(*3*) of this section.

(*3*) At the conclusion of the examinations expert's engagement pursuant to paragraph (d)(2)(ii)(G)(*1*) or (*2*) of this section, the Joint Audit Committee must obtain from the examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants. The Joint Audit Committee must provide the Director of the Division of Swap Dealer and Intermediary Oversight with a copy of the examinations expert's written report, and the Joint Audit Committee's written responses to any of the examinations expert's findings and recommendations, within thirty days of the receipt thereof. Upon resolution of any questions or comments raised by the Division of Swap Dealer and Intermediary Oversight, and upon written notice from the Division of Swap Dealer and Intermediary Oversight that it has no further comments or questions on the examinations standards as amended (by reason of the examinations expert's proposals, consideration of the Division of Swap Dealer and Intermediary Oversight's questions or comments, or otherwise), the Joint Audit Committee shall commence applying such examinations standards for examining its registered futures commission merchant members for all examinations conducted with an ''as of'' date later than the date of the Division of Swap Dealer and Intermediary's written notification.

(H) The Joint Audit Program must require the Joint Audit Committee members to report to their respective risk and/or audit committee of their respective board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the Joint Audit Program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(I) The examinations expert's written report, the Joint Audit Committee's response, if any, as well as any information concerning the supervisory program is confidential.

(iii) *Meetings of the Joint Audit Committee.* (A) The Joint Audit Committee members must meet at least once each year. During such meetings, the Joint Audit Committee members shall consider revisions to the Joint Audit Program as a result of regulatory changes, revisions to the examination standards resulting from new or amended auditing standards issued by the Public Company Accounting Oversight Board, or the results of an examinations expert's review.

(B) In addition to the items considered in paragraph (d)(2)(iii)(A) of this section, the Joint Audit Committee members must consider the following items during the meetings:

(*1*) Coordinating and sharing information between the Joint Audit Committee members, including issues and industry concerns in connection with examinations of futures commission merchants;

(*2*) Identifying industry regulatory reporting issues and financial and operational internal control issues and modifying the Joint Audit Program accordingly;

(*3*) Issuing risk alerts for futures commission merchants and/or designated self-regulatory organization examiners on an as-needed basis;

(*4*) Responding to industry issues; and

(*5*) Providing industry feedback to Commission proposals.

(C) Minutes must be taken of all meetings and distributed to all members on a timely basis.

(D) The Director of the Division of Swap Dealer and Intermediary Oversight must receive timely prior notice of each meeting, have the right to attend and participate in each meeting and receive written copies of the minutes required pursuant to paragraph (d)(2)(iii)(C) of this section, respectively.

* * * * *

Issued in Washington, DC, on March 29, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman J. Christopher Giancarlo

This Project KISS final rule regarding financial surveillance examination program requirements for self-regulatory organizations (SROs) will revise and appropriately limit the scope of a third-party expert's evaluation of a SRO's financial surveillance program, and extend the minimum timeframes from three to five years from when a SRO must engage a third-party expert to evaluate its FCM standards for consistency with certain auditing standards. All of the comments received were in support of this proposal. I also support it because it will reduce the burdens and costs for SRO examinations, without reducing their effectiveness. It also more appropriately balances and recognizes the role and capabilities of the Commission's oversight expertise.

Appendix 3—Statement of Commissioner Dan. M. Berkovitz

I support the targeted amendments to Commission Regulation 1.52 made in today's final rules regarding third-party expert examinations of self-regulatory organization (''SRO'') financial surveillance programs. The amendments adopted in these final rules are an outgrowth of the Commission's experience with Regulation 1.52 since 2013, and they maintain the Commission's strong commitment to customer protection while modifying certain requirements found to provide no incremental regulatory benefit. The Commission's customer protection rules are fundamental to safeguarding customer assets, promoting the safety and soundness of U.S. derivatives markets, and maintaining public confidence in our markets. I strongly support these customer protection rules.

Regulation 1.52 is part of the Commission's comprehensive framework for the protection of customers and customer funds. The rules require that SROs, including contract markets and registered futures associations, monitor member FCMs' compliance with financial and related reporting rules.[1] In 2013, the Commission significantly enhanced its customer protection rules to provide customers with greater confidence that their funds are secure and that SROs have effective programs for the oversight of member FCMs.

The narrow amendments we are adopting address an SRO's engagement of a third-party expert to evaluate its financial surveillance program. With experience, the Commission has determined that third-party experts are appropriate to assess an SRO's implementation of examination standards issued by the Public Company Accounting Oversight Board (''PCAOB''). Commission staff is better positioned and has the expertise to evaluate an SRO's oversight program as measured against the Commission's rules. Commission staff routinely conducts such evaluations and provides feedback to SROs.

The final rules also make additional amendments to Regulation 1.52 regarding, for example, the frequency with which SROs must engage a third-party expert. Changes to relevant PCAOB standards are infrequent, and the final rules require an SRO to engage a third-party expert at least once every five years. As a further safeguard, Commission staff retains the authority to direct an SRO to engage a third-party expert when relevant changes in PCAOB standards occur.

I thank the CFTC staff for their work on these final rules and for their responsiveness to questions and comments.

[FR Doc. 2019–06443 Filed 4–2–19; 8:45 am]

BILLING CODE 6351–01–P

[1] Regulation 1.52 also permits two or more SROs to file a plan with the Commission for delegating to another SRO certain responsibilities related to monitoring and examining FCMs' compliance with financial and related reporting requirements. SROs participating in such a plan form a Joint Audit Committee (''JAC''), and prepare a Joint Audit Plan in accordance with the requirements of Regulation 1.52. The amendments to Regulation 1.52 adopted in today's final rules also address the JAC's engagement of third-party experts, as applicable.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE78

Segregation of Assets Held as Collateral in Uncleared Swap Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending selected provisions of its regulations to simplify certain requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') concerning notification of counterparties of their right to segregate initial margin for uncleared swaps, and to modify requirements for the handling of segregated initial margin.

DATES: Effective May 3, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov;* or Christopher Cummings, Special Counsel, 202–418–5445, *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Existing Requirements
1. Statutory Basis and Regulatory Background
2. Subpart L as Originally Adopted
B. Factors Considered by the Commission
II. Final Rule, Summary of Comments, and Commission Response
A. Regulation 23.700—Definitions
B. Regulation 23.701—Notification of Right to Segregation
C. Regulation 23.702—Requirements for Segregated Initial Margin
D. Regulation 23.703—Investment of Segregated Initial Margin
E. Regulation 23.704—Requirements for Non-Segregated Margin
III. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
1. Background
2. Modification of Collection 3038–0075
C. Cost-Benefit Considerations
1. Background
2. Regulations 23.700, 23.701, 23.702, and 23.703—Notification of Right to Initial Margin Segregation
D. Antitrust Considerations

I. Introduction

A. Existing Requirements

1. Statutory Basis and Regulatory Background

Subpart L of part 23 of the Commission's regulations (''Segregation of Assets Held as Collateral in Uncleared Swap Transactions,'' consisting of Regulations 23.700 through 23.704) was published in the **Federal Register** on November 6, 2013 and became effective on January 6, 2014.[1] Subpart L implements the requirements for segregation of initial margin for uncleared swap transactions set forth in section 4s(*l*) of the Commodity Exchange Act (''CEA'' or the ''Act'').[2]

CEA section 4s(*l*) addresses segregation of initial margin held as collateral in certain uncleared swap transactions. The section applies only where a swap between a counterparty and an SD or MSP is not submitted for clearing to a derivatives clearing organization (''DCO''). It requires that an SD or MSP notify the counterparty of the SD or MSP at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty. Such funds or property are to be segregated in a separate account from the SD's or MSP's assets. The separate account must be held by an independent third-party custodian and must be designated as a segregated account for the counterparty. CEA section 4s(*l*) does not preclude the counterparty and the SD or MSP from agreeing to their own terms regarding investment of initial margin (subject to any regulations adopted by the Commission) or allocation of gains or losses from such investment. If the counterparty elects not to require segregation of margin, the SD or MSP is required to report quarterly to the counterparty that the SD's or MSP's back office procedures relating to margin and collateral are in compliance with the agreement between the counterparty and the SD or MSP.

In November 2015, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency (collectively, ''Prudential Regulators'') adopted margin requirements for swaps entered into by SDs and MSPs that they regulate (''Prudential Regulator Margin Rules'').[3] In January 2016, the Commission adopted margin requirements for certain uncleared swaps which requirements are applicable to SDs and MSPs for which there is no prudential regulator (''CFTC Margin Rule'').[4] The CFTC Margin Rule and the Prudential Regulator Margin

[1] *See* 78 FR 66621 (Nov. 6, 2013).

[2] 7 U.S.C. 6s(*l*) (2012 and Supp. 2015). Like the Commission's regulations, the CEA can be accessed through the Commission's website.

[3] *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015).

[4] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150 through 23.159, 23.161. The Commission also adopted a rule addressing margin in the cross-border context. *See* 17 CFR 23.160.

Rules established initial and variation margin requirements for SDs and MSPs.[5]

Prior to the CFTC Margin Rule effective date of April 1, 2016, if initial margin[6] was to be exchanged by counterparties to uncleared swaps involving an SD or MSP, the requirements of subpart L applied. The CFTC Margin Rule amended Regulation 23.701 to clarify that from and after the effective date of the CFTC Margin Rule, the requirements of Regulations 23.702 and 23.703 would not apply where segregation is mandatory under the CFTC Margin Rule.[7] As a result, Regulations 23.702 and 23.703 generally apply only when initial margin is to be exchanged between an SD or MSP and either: (1) A nonfinancial end-user, or (2) a financial end-user without ''material swaps exposure,'' as defined in the CFTC Margin Rule.

2. Subpart L as Originally Adopted

Regulation 23.700, as originally adopted, defines certain terms used in subpart L. Regulation 23.701 requires an SD or MSP: (1) To notify each counterparty to a swap that is not submitted for clearing that the counterparty has the right to require that any initial margin it provides be segregated; (2) to identify a creditworthy custodian that is a non-affiliated legal entity, independent of the SD or MSP and the counterparty, to act as depository for segregated margin assets; and (3) to provide information regarding the costs of such segregation. The regulation specifies that the notification is to be made (with receipt confirmed in writing) to an officer of the counterparty responsible for management of collateral (or to specified alternative person(s)), and that it need only be made once in any calendar year. Finally, the regulation provides that a counterparty can change its election to require (or not to require) segregation of initial margin by written notice to the SD or MSP.

Regulation 23.702 reiterates the requirement that the custodian be a legal entity independent of the SD or MSP and the counterparty. It also requires that segregated initial margin be held in a designated account segregated for, and on behalf of, the counterparty. Finally, the regulation specifies that the segregation agreement must provide that: (1) Withdrawals from the segregated account be made pursuant to agreement of both the counterparty and the SD or MSP, with notification to the non-withdrawing party; and (2) the custodian can turn over segregated assets upon presentation of a sworn statement that the presenting party is entitled to control of the assets pursuant to agreement among the parties.

Regulation 23.703 restricts investment of segregated assets to investments permitted under Regulation 1.25 and (subject to that restriction) permits the SD or MSP and the counterparty to agree in writing as to investment of margin and allocation of gains and losses.

Regulation 23.704 requires the SD's or MSP's chief compliance officer (''CCO'') to report quarterly to any counterparty that does not elect to segregate initial margin, whether or not the SD's or MSP's back office procedures regarding margin and collateral requirements were, at any point in the previous calendar quarter, not in compliance with the agreement of the counterparties.

B. Factors Considered by the Commission

Over the course of more than four years of administering subpart L of part 23, the Commission has observed that the detailed requirements of those regulations have proven difficult for SDs and MSPs to implement and to satisfy in a reasonably efficient manner. These observations were buttressed by suggestions submitted in response to the Commission's ''Project KISS'' initiative as described herein. In addition, the Commission understands that very few swap counterparties have exercised the right to elect to segregate initial margin collateral pursuant to subpart L during the four years that the regulations have been effective.

Early in the implementation period, in response to multiple inquiries, Commission staff issued CFTC Staff Letter 14–132 (October 31, 2014),[8] which provided interpretative guidance to SDs and MSPs regarding application of certain of the segregated margin requirements. In particular, the letter noted concerns expressed by SDs and MSPs that despite their earnest efforts to obtain confirmation of receipt of notification and election regarding segregation, failure by a counterparty to respond to the SD or MSP could bar any further swap transactions with the counterparty until a response was received.[9] However, notwithstanding the issuance of Staff Letter 14–132, issues regarding compliance with subpart L continue to be raised.[10]

On May 9, 2017, the Commission published in the **Federal Register** a request for information,[11] pursuant to the Commission's ''Project KISS'' initiative, seeking suggestions from the public for simplifying the Commission's regulations and practices, removing unnecessary burdens, and reducing costs. A number of suggestions the Commission received addressed various provisions of subpart L. In general, those suggestions echoed Commission staff concerns that the requirements in subpart L may be more burdensome than is necessary to achieve the purposes of the statute and may be counterproductive to the extent that they frustrate the decision making process and discourage the use of individual segregation accounts.[12] Persons responding to Project KISS also noted that some requirements cause confusion because they overlap with segregation requirements in the margin regulations recently adopted by the CFTC and Prudential Regulators.[13] Furthermore, responders stated that the requirements in subpart L are overly prescriptive, eliminating the possibility for reasonable bilateral negotiation that

[5] *See* 17 CFR 23.151.

[6] The Commission notes that the term ''Initial Margin'' is used only for purposes of subpart L of the Commission's regulations.

[7] 81 FR at 704. The amendment did not address the application of subpart L to swaps subject to mandatory segregation under the Prudential Regulator Margin Rules. As described infra, this Proposal would clarify that the swaps subject to the Prudential Regulator Margin Rules are to be addressed in the same manner as swaps subject to the CFTC Margin Rule.

[8] *See* CFTC Staff Letter No. 14–132 (October 31, 2014), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-132.pdf.*

[9] The Proposal aimed to address generally some of the confusion that prompted the issuance of CFTC Staff Letter 14–132, supra n.8, in the context of other changes to subpart L that were proposed.

[10] For example, issues regarding compliance with these regulations have been raised with the National Futures Association as recently as January 2018, indicating ongoing uncertainty. *See* pp. 6–7 of the transcript of the NFA Swap Dealer Examination Webinar, January 18, 2018, available at *https://www.nfa.futures.org/members/member-resources/files/transcripts/sdexamswebinar transcriptjan2018.pdf.*

[11] *See* 82 FR 21494 (May 6, 2017) and 82 FR 23765 (May 24, 2017).

[12] *See, e.g.,* letter from the Financial Services Roundtable (''FSR Letter''), dated September 30, 2017 at 55 (noting that ''compliance with these regulations has proven to be unduly burdensome for swap dealers when weighed against the protections afforded to swap counterparties thereunder''), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61427&SearchText=.*

[13] *Id. See also* letter from the Securities Industry and Financial Markets Association (''SIFMA Letter'') dated September 29, 2017 at 2 (''These requirements create unnecessarily burdensome obligations, which in many instances are duplicative or create confusion due to parallel mandatory collateral segregation requirements found within the CFTC and [prudential regulator] rules on margin requirements for non-centrally cleared swaps, and similar requirements in foreign jurisdictions.''), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61359&SearchText=.*

takes place in the normal course to determine certain terms, including appropriate collateral arrangements based on the circumstances of the broader counterparty relationship.[14]

Responders also asserted that counterparties to uncleared swaps rarely elect to require segregation of margin pursuant to the existing provisions of subpart L.[15] Commission staff likewise has observed evidence of minimal exercise of the election to segregate.[16] In addition, Commission staff has discussed this issue with the National Futures Association (''NFA'') to ascertain NFA's observations from examining a substantial number of SDs in connection with the implementation of subpart L. Based on this experience, it appeared that for nearly every SD examined, fewer than five counterparties elected segregation pursuant to subpart L since registration. For some SDs, not a single counterparty elected to segregate pursuant to subpart L.

In light of these considerations, the Commission proposed to amend the regulations governing segregation of margin for uncleared swaps (the ''Proposal'').[17] The Commission expressed its belief that the proposed amendments would reduce unnecessary burdens on registrants and market participants by simplifying some overly detailed provisions, thereby reducing the intricate and prescriptive requirements. The Commission further opined that the proposed changes would facilitate more efficient swap execution by eliminating complexity and confusion that slows down documentation and negotiation of hedging and other swap transactions. Finally, the Commission asserted that the amendments, by reducing the prescriptive elements of the rules, potentially could encourage more segregation (as was intended by the CEA),[18] by providing flexibility for the parties to establish segregation arrangements that better suit their specific needs.

In the preamble to the Proposal, the Commission also sought comment from the public on the appropriateness of the proposed changes, as well as suggestions for other amendments that could streamline, simplify, and reduce the costs of subpart L without sacrificing the protections called for by CEA section 4s(*l*). The comment period for the Proposal closed on September 28, 2018, and four comment letters [19] were received: one from a swap dealer; [20] one from a registered futures association;[21] one from an association of credit risk professionals in the energy industry; [22] and one jointly submitted by a trade organization for participants in over-the-counter derivatives markets and a trade organization for broker-dealers, investment banks, and asset managers.[23]

II. The Final Rule, Summary of Comments, and Commission Response

The Commission is adopting changes to Regulations 23.700, 23.701, 23.702, 23.703, and 23.704 as proposed. In Regulation 23.700, the definition of ''Margin'' is eliminated (and where that term was used elsewhere in subpart L it is replaced with ''Initial Margin''). In Regulation 23.701, the following changes are made: (1) The required notification of the right to segregate is to be made at the beginning of the first uncleared swap transaction that provides for exchange of initial margin; (2) the exception to the notification requirement in cases where segregation is required under the CFTC Margin Rule is expanded to include cases where segregation is required under Prudential Regulator Margin Rules; (3) the annual notification requirement is eliminated; (4) the requirement to identify in the notification one or more creditworthy custodians and to provide information regarding the cost for segregation for each named custodian is eliminated; (5) the requirement to provide the notification to a person with specific job title at the counterparty is eliminated; (6) the terms of segregation are to be established by written agreement with the counterparty; and (7) the requirement to obtain from the counterparty and maintain written confirmation of receipt of the notification is eliminated. In Regulation 23.702, specific requirements regarding the withdrawal or turnover of control of initial margin are replaced with a provision that the segregation agreement provide that instructions to withdraw initial margin be in writing and that withdrawal notification be given immediately to the non-withdrawing party. In Regulation 23.703, the restriction on investment of segregated margin to investments permitted under Regulation 1.25 is eliminated. In Regulation 23.704, the requirement that the SD's or MSP's CCO report quarterly to each counterparty that does not elect segregation is replaced by a general requirement that the SD or MSP so report, and that the report must state that the SD's or MSP's back office procedures were in compliance with the agreement of the counterparties.

All of the commenters generally supported the Proposal and the Commission's efforts to simplify and rationalize the existing requirements. Comments that addressed particular provisions of subpart L will be discussed below.

A. Regulation 23.700—Definitions

As proposed, the Commission is amending Regulation 23.700 to eliminate the definition of ''Margin'' and to make conforming changes to subpart L by replacing the term ''Margin'' with ''Initial Margin'' in Regulations 23.701, 23.702, and 23.703. As originally adopted, Regulation 23.700 defines ''Margin'' as ''both Initial Margin and Variation Margin.'' [24] As amended, subpart L will no longer refer collectively to initial margin and variation margin, because the right to require segregation applies only to initial margin, and not to variation margin. Thus, there is no need for the separate defined term ''Margin.'' [25]

IECA was the only commenter to address this issue and asked the Commission to revise the defined terms to relate more closely to over-the-counter market terms by clarifying whether or not Initial Margin is analogous to a deposit. IECA pointed out that independent amounts are often posted not to secure changes in market position but to protect settlement risk, and that variation margin is an exchange

[14] *See* SIFMA Letter at 2. *See also* letter from the Global Foreign Exchange Division of the Global Financial Markets Association (''GFMA Letter'') dated September 29, 2017, available at: *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61414&SearchText=.*

[15] *See* FSR Letter at 55 (''Our members have advised that counterparties (1) rarely, if ever, elect to segregate [initial margin] and (2) have found little use for receiving the notices.'').

[16] *See* 83 FR 36484, 36486 (Jul. 30, 2018).

[17] *See* ''Segregation of Assets Held as Collateral in Uncleared Swap Transactions,'' 83 FR 36484 (Jul. 30, 2018).

[18] 83 FR at 38486. *See also* 75 FR 75432, 75433 (Dec. 3, 2010) (noting the important right for a counterparty to elect segregation ''with a certain degree of favor given to an affirmative election'').

[19] The comment letters may be accessed via the Commission's website at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2898.*

[20] Letter from INTL FC Stone Markets, LLC, Sept. 27, 2018 (''IFCS'').

[21] Letter from National Futures Association, Sept. 28, 2018 (''NFA'').

[22] Letter from International Energy Credit Association, Sept. 28, 2018 (''IECA'').

[23] Letter from International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, Sept. 27, 2018 (''ISDA/SIFMA'').

[24] *See* 17 CFR 23.700.

[25] The Commission is also adopting a grammatical change for the definition of the term ''segregate'' (the words ''*Segregate.* To segregate two or more items is to keep them in separate accounts . . .'' were replaced with ''*Segregate* means to keep two or more items in separate accounts . . .'').

of collateral and not a ''payment'' in exchange for something.[26] In the adopting release for subpart L, the Commission considered several comments questioning its selection of defined terms and it adopted the ''initial margin'' definition notwithstanding those comments, noting that ''variation margin'' is used in the statute and ''initial margin'' is the obvious complementary term.[27] After review of the comments, the Commission confirms the rationale it articulated for proposing the amendments to Regulation 23.700, and therefore, is adopting the amendments as proposed.

B. Regulation 23.701—Notification of Right to Segregation

As proposed, the Commission is amending paragraph (a) of Regulation 23.701: (1) To require that the notification to a counterparty be made prior to execution of the first uncleared swap transaction that provides for the exchange of initial margin, and not prior to each transaction; (2) to provide that the notification obligation does not apply where segregation is required under Prudential Regulator Margin Rules; (3) to eliminate the requirement that the notification identify one or more creditworthy, independent custodians; and (4) to eliminate the requirement to provide information regarding the price for segregation for each identified custodian. Paragraph (b) remains unchanged. The Commission is replacing paragraph (c) with a simple statement that if segregation is elected, the terms shall be established by written agreement and eliminating paragraphs (d) and (e) (with existing paragraph (f) redesignated as new paragraph (d)). As discussed below, after review of the comments, the Commission confirms the rationale articulated for proposing the amendments to Regulation 23.701, and therefore, is adopting the amendments as proposed.

As originally adopted, paragraphs (a) and (b) of Regulation 23.701 direct an SD or MSP to notify each counterparty to an uncleared swap of the right to require segregation of initial margin. Paragraph (c) requires the SD or MSP to furnish the required notification to an officer of the counterparty responsible for management of collateral, or, if no such person is identified by the counterparty, then to the chief risk officer, or, if there is no such officer, to the chief executive officer, or if none of the foregoing, the highest-level decision-maker for the counterparty. Paragraph (d) requires the SD or MSP, ''prior to confirming the terms of any such swap,'' to obtain confirmation of receipt of the notification and the counterparty's election to require or not require segregation of initial margin (such confirmation to be retained in accordance with Regulation 1.31).[28] Paragraph (e) provides that the notification need be made only once in any calendar year.[29] Finally, paragraph (f) provides that the counterparty may change the segregation election at its discretion by providing a written notice to the SD or MSP.

Based on staff's implementation experience and on suggestions received in connection with Project KISS, the Commission expressed in the preamble to the Proposal its belief that these requirements are unnecessarily prescriptive and that they do not reflect the practical realities of how over-the-counter swap transactions are negotiated and managed by the parties. Accordingly, the Commission proposed to modify the notification requirement in paragraph (a) and to remove the requirements in existing paragraphs (c), (d), and (e). The Commission did not propose to amend paragraph (f) except to redesignate it as paragraph (d).[30]

The Commission proposed to revise paragraph (a) to require that the notification to a counterparty be made prior to execution of the first uncleared swap transaction that provides for the exchange of initial margin,[31] not prior to each transaction or annually as currently prescribed by paragraphs (a) and (e).[32] CEA section 4s(*l*)(1)(A) requires notification of the right to segregate ''at the beginning of a swap transaction.'' The Commission stated that it was interpreting that phrase to mean at the beginning of an SD's or MSP's swap transaction relationship with each counterparty.[33]

This interpretation is an extension of the view the Commission expressed when it originally proposed and adopted Regulation 23.701. Specifically, with respect to the statutory requirement that notification be provided ''at the beginning of a swap transaction,'' the Commission noted that ''[w]hile this language could be read to require transaction-by-transaction notification, where the parties have a pre-existing or on-going relationship, such repetitive notification could be redundant, costly, and needlessly burdensome. On the other hand, the importance of the segregation decision, as discussed above, suggests that some periodic reconsideration might be appropriate.'' [34] The Commission then noted that the decision to require an annual notice was an attempt to balance the interests of ensuring that counterparties know of their segregation rights against inundating them with redundant information. The Commission, now, based on its experience, has determined that this is not the right balance, and in fact, it has not observed any significant use of segregation. As the Commission noted in 2013, the statute ''does not merely grant counterparties the legal right to segregation; it specifically requires that the existence of this right be communicated to them.'' [35] These rule amendments adopted herein still ensure that the rights imparted under CEA section 4s(*l*) are communicated to SD/MSP counterparties while limiting the burden of providing and receiving superfluous notifications.

When it originally adopted Regulation 23.701(e), the Commission considered comments requesting a loosening of the once-per-year notice requirement and rejected the requests in the belief that requiring notification once each year would balance the burden of providing notices and getting responses with the importance of the right to segregate initial margin.[36] However, on the basis of implementation experience since Regulation 23.701 was originally adopted, the Commission proposed to require notification at the beginning of a swap trading relationship that provides for exchange of initial margin. The importance of the notification informing the counterparty of the right to segregate is paramount at the beginning of the SD/MSP-counterparty relationship. It is at the time the parties initiate the first transaction that the decision to segregate initial margin will

[26] IECA at 3–5.

[27] *See* 78 FR at 66623. The Commission considered a range of comments, including that ''Initial Margin'' was too broad or too narrow, or that ''independent amount'' should be used instead (or at least tracked or referenced), before concluding that ''Initial Margin'' was the most practical choice under the circumstances.

[28] 17 CFR 1.31.

[29] Some confusion has been caused by the requirement in paragraph (d) to provide the notice ''prior to confirming the terms of any such swap,'' and the requirement in paragraph (e) to provide the notice once in any calendar year. *See* SIFMA Letter at 3.

[30] *See* 83 FR at 36486–88.

[31] This revision is consistent with guidance provided in CFTC Staff Letter 14–132, supra n.8.

[32] Thus, under the Proposal, paragraph (e) of Regulation 23.701 (providing that the notification need only be made once in any calendar year) would become unnecessary, and was proposed to be deleted.

[33] *See* 83 FR at 36487.

[34] *See* 78 FR at 66625.

[35] *Id.*

[36] *Id.*

typically be made.[37] Subsequent notifications, in addition to the initial notification, risk adding confusion over the duration of the contractual relationship between the parties.[38] In this regard, the Commission stated its understanding that counterparties rarely change their election, once made. Accordingly, in addition to modifying the notification requirement in paragraph (a), the Commission proposed to eliminate paragraph (e)'s annual notification requirement in light of the proposed obligatory notification at the beginning of the first uncleared swap transaction that provides for exchange of initial margin.

The Commission also proposed that paragraph (a) be revised to eliminate the notification requirement where segregation is mandatory under Regulation 23.157 and where it is mandated under applicable rules adopted by a Prudential Regulator under CEA section 4s(e)(3). Additionally, paragraph (a)(2) (the requirement that the notification identify one or more creditworthy, independent custodians) was proposed to be deleted because selection of a custodian can be made when and if the counterparty elects to require segregation. Because very few counterparties elect to require segregation, the Commission stated that it is unnecessarily burdensome to require an SD or MSP to confirm which custodians are available and continually update the SD's or MSP's notification form with the name of the custodian(s) available. Moreover, the Commission further understood that a counterparty's initial decision to consider requiring (or not requiring) segregation is driven principally by the counterparty's concern about protecting its initial margin and the terms of the segregation agreement, and not by the identity of the custodian.[39] Similarly, the Commission proposed to delete paragraph (a)(3) (information regarding the price for segregation for each custodian) because such pricing may vary for each segregation arrangement and would normally be subject to negotiation. To the extent pricing would be a factor in the decision to segregate, counterparties can and do discuss pricing as a term of the custodial arrangement when the counterparty indicates an interest in segregation.[40]

Similarly, the Commission proposed to eliminate the requirement in paragraph (c) that the SD or MSP provide the notification to a person at the counterparty with a specific job title. Based on implementation experience, the Commission expressed the view that the regulation as initially adopted is unnecessarily prescriptive in dictating who must receive the notification. For example, in many cases, the person at the counterparty best situated to evaluate the notification and the decision to segregate will be a person directly involved in negotiating the swap, regardless of that person's title. The Commission notes that in removing the specific designation of officers to receive the notification it would not be eliminating the expectation that each registrant will use reasonable judgment in identifying an appropriate person at the counterparty who can evaluate the right to elect segregation (and either act on it or bring it to the attention of someone in a position to act on it). The Commission stated its continued belief that, to be effective, the notification must be made to a person at the counterparty who understands its meaning and, to the extent necessary, can direct it to the appropriate personnel at the counterparty. The proposed change sought to advance the same underlying policy objective as the existing requirement (namely that the notification be given to appropriate personnel at the counterparty), but would recognize that dictating how counterparties communicate the information in question creates unnecessary burdens and potentially hinders the ability of the parties to direct the information to the person(s) best situated to evaluate it.[41]

As proposed, new paragraph (c) would simplify requirements in existing Regulation 23.701 by providing that ''[i]f the counterparty elects to segregate initial margin, the terms of segregation shall be established by written agreement.'' [42]

As noted above, the Commission proposed to eliminate the additional requirements in existing paragraph (d), which are more extensive than the notification requirements set forth in CEA section 4s(*l*). Subsequent to adoption of subpart L, experience with implementation of the requirements of Regulation 23.701 has made the Commission aware of problems experienced by registrants in complying with these additional requirements. For example, persons seeking guidance have noted that paragraph (d)'s current requirement that the SD not execute a swap with the counterparty until it receives confirmation of the counterparty's receipt of the notification has the potential to block swap trading in some circumstances.[43] Instances of forestalled trading caused by this requirement could be particularly harmful for nonfinancial end-users that have ongoing, dynamic hedging programs (to hedge, for example, commodity price risk or foreign exchange risk).[44]

The Commission observed that compliance with the existing segregation notification requirements in the regulation necessitates lengthy explanations and instructions from SDs and MSPs to their counterparties and imposes additional administrative processes requiring counterparties to take steps that are outside of the normal course of transacting in swaps. Some of these steps cause transaction delays and deviations from established business procedures for collateral custodial arrangements and disclosure of counterparty rights generally, and do not advance the counterparty's right to segregate initial margin. For nonfinancial end-user counterparties who tend to use swaps primarily for hedging purposes, these added compliance steps often cause confusion and uncertainty that can inhibit opportune, timely hedging. For counterparties that execute swaps frequently and have determined that they wish to segregate, the additional requirements merely add unnecessary hurdles to the transaction process. Accordingly, the Commission stated that it does not believe that the burdens imposed by these prescriptive requirements provide meaningful regulatory benefits beyond those provided by the provisions in proposed amended Regulation 23.701.[45]

Several commenters generally supported the amendments to Regulation 23.701. NFA stated that it supports the Commission's efforts to clarify and simplify these requirements, and that ''[b]ased on our experience, we believe that eliminating a segregation notice requirement under these

[37] For existing master netting agreements for which the SD has already sent a segregation notice, the Commission took the view in the preamble to the Proposal that such notice would be sufficient for purposes of complying with the amended regulations, if adopted, and therefore the SD would not be required to send a new notice.

[38] *See* FSR Letter at 55, supra n.12 *See also,* supra n.10.

[39] *See* 83 FR at 36487.

[40] *Id.* The Commission also notes that the requirements in paragraphs (a)(2) and (a)(3) are not found in CEA section 4s(*l*).

[41] *Id.*

[42] *Id.*

[43] *See* 83 FR at 36487. *See also* CFTC Staff Letter 14–132, supra n.8.

[44] *See* IECA Letter at 8 (commenting that the proposed interpretation of CEA section 4s(*l*)(1)(A) is reasonable given the commercial realities of uncleared swaps transactions and relationships between SDs and MSPs and their counterparties).

[45] *See* 83 FR at 36487–36488.

circumstances would help reduce unnecessary correspondence and avoid confusion.'' [46] IFCS stated that ''the current notification requirements often cause confusion to [their] customers—requiring the Firm to respond with lengthy explanations—rather than providing any meaningful benefit.'' [47] Two other commenters supported eliminating the segregation notice requirement where segregation is mandatory under rules of a Prudential Regulator, asserting that this will help reduce unnecessary correspondence and avoid confusion.[48] In response to a question in the Proposal, IECA stated that the Commission's proposed interpretation of the notification requirement in CEA section 4s(*l*)(1)(A) is reasonable given the commercial realities of uncleared swaps transactions and relationships between SDs and MSPs and their counterparties.[49]

Because drafting and exchange of relationship documentation can occur well before the first transaction, ISDA/SIFMA sought confirmation that notification of the right to segregate may be given at any time prior to the first transaction,[50] and further confirmation that trading can continue during any interim period between a counterparty's election to segregate initial margin and the execution of related documentation.[51] The Commission is declining at this time to specify what constitutes the beginning of the first swap transaction or to proscribe when trading may commence because it believes that the counterparties are best able to determine those parameters under their specific circumstances. IECA asked the Commission to provide that the notification can be part of the relationship documentation, noting that the personnel who negotiate, review, and execute relationship documentation are appropriate personnel to understand and act upon such a notification.[52] The Commission notes that although the statute does not specify the manner in which the required notification must be provided, a reasonable interpretation would require that it be sufficiently conspicuous to draw the counterparty's attention.

Three commenters specifically supported elimination of the existing requirement to notify counterparties annually of the right to require segregation. IFCS stated that ''customers have indicated that they find little use for receiving a Segregation Notice on an annual basis,'' pointing to ''the administrative burdens associated with providing the notice on an annual basis coupled with its lack of utility'' in supporting elimination of the requirement.[53] NFA added that if the Commission retains the annual notification requirement, it should eliminate it where counterparties have previously elected to require segregation, noting that very few counterparties have, over time, changed their initial election.[54] Because the Commission is eliminating this requirement, NFA's comment is moot. In response to a question in the Proposal, IECA urged that the Commission provide that there is no need for a swap dealer to provide any such notice unless or until there is initial margin in the swap trades between the two parties.[55] In response, the Commission notes that the language of CEA section 4s(*l*) does not condition the obligation to notify on the actual tender of initial margin. Additionally, in response to a question, IECA stated that the Commission should not provide that the counterparty may request or opt to continue to receive notification at the beginning of each swap transaction or an annual or some other periodic basis.

IFCS expressly supported elimination of the requirement to include information about the price of custody services in the notification of the right to require segregation, stating that ''[c]osts associated with segregation are largely controlled by the third-party custodian and may vary for each segregation agreement, which, together, make it difficult to provide meaningful pricing information in the notification.'' [56] All commenters supported elimination of the requirement to provide the required notification to a specified individual, noting that SDs and counterparties are best able to determine an appropriate recipient for the notification.[57] IECA noted that by eliminating the requirement to obtain and keep a confirmation of the counterparty's receipt of the notification of right to require segregation, over-the-counter market participants will save significant costs and avoid risk and confusion. Specifically, IECA stated that ''[s]wap trades are documented on 'confirmations.' The current rule calls two different things . . . 'confirmations' as necessary for swap trades,'' [58] and also pointed out that ''[t]he notice and 'confirmation' mechanisms may also conflict with corporate resolutions, and agreement representations, regarding who is authorized to trade for the counterparty.'' [59] IECA also stated that proposed paragraph (d) of Regulation 23.701 should be replaced with language that permits a counterparty to knowingly choose to waive in their master agreement the right to require segregation under CEA section 4s(*l*)(1)(B), and that also permits the counterparty to waive the right to be notified that it can require segregation.[60] The Commission believes that the amendments it is adopting provide sufficient flexibility (*e.g.,* eliminating the requirement to provide notification prior to each swap), and observes that including a waiver mechanism would appear to be inconsistent with Congressional intent as expressed in CEA section 4s(*l*) (*i.e.,* that counterparties to uncleared swaps be provided with affirmative notification of the right to elect segregation).

C. Regulation 23.702—Requirements for Segregated Initial Margin

As proposed, the Commission is amending paragraph (c) of Regulation 23.702 to replace the specific requirements in subparagraphs (1) and (2) regarding withdrawal or change in control of margin with a requirement ''that any instruction to withdraw Initial Margin shall be in writing and that notification of the withdrawal shall be given immediately to the non-withdrawing party.'' As adopted, Regulation 23.702 sets forth requirements for the custody of initial margin segregated pursuant to a counterparty's election under Regulation 23.701. Paragraph (c)(2) of Regulation 23.702 provides specific requirements for the withdrawal and turnover of control of initial margin. In particular, paragraph (c)(2) requires the custodian to turn over control of initial margin upon presentation of a written statement made by an authorized representative under oath or under penalty of perjury as specified in 28 U.S.C. 1746. Such statement must provide that the person presenting it is entitled to assume control of the initial margin pursuant to the parties' agreement. The other party must be immediately notified of the turnover of control. As discussed below, after review of the comments, the

[46] NFA at 2.
[47] IFCS at 2.
[48] NFA at 1–2; *accord* ISDA/SIFMA at 3.
[49] IECA at 8.
[50] ISDA/SIFMA at 3–4.
[51] *Id.* at 4.
[52] IECA at 5–6.
[53] IFCS at 2; *accord* IECA at 2 and NFA at 2.
[54] NFA at 2.
[55] IECA at 8.
[56] IFCS at 2.
[57] IFCS at 2; ISDA/SIFMA at 3; NFA at 2; *accord* IECA at 2.
[58] IECA at 2.
[59] *Id.*
[60] *Id.* at 6–7.

Commission confirms the rationale articulated for proposing the amendments to Regulation 23.702, and therefore, is adopting the amendments as proposed.

In the Proposal, the Commission expressed its belief that, while paragraph (c)(2) may generally be consistent with the manner in which custodial arrangements work, the prescriptive requirements of the regulation, including requiring a specific form, the language used, and the certification needed, do not account for change in control arrangements in custodial agreements that are sometimes customized to reflect the unique business facts and circumstances that may exist between any two parties and the custodian. For example, the unique nature of the collateral posted or the specific terms of change in control triggers may warrant different notice procedures than those specified by paragraph (c)(2). Alternative notice procedures may allow for more timely and effective change in control under real-world circumstances and better protect each party's interests. Accordingly, the Commission said it believed that more flexibility is warranted, and that it is more appropriate to leave these matters up to negotiation by the parties.[61]

IFCS specifically expressed support for the proposed amendments to Regulation 23.702.[62] IFCS stated that it ''believes the current regulations are overly prescriptive and welcomes the opportunity for bilateral negotiations between sophisticated market participants who are, by definition, deemed to be able to protect their own interests.'' [63] Another commenter suggested a change to existing paragraph (c)(2).[64] However, because the Commission is eliminating that paragraph, the comment is moot.

In response to a question in the Proposal regarding whether the Commission should adopt in Regulation 23.702(a) more specific financial or affiliation qualifications for the custodian that an SD or MSP uses as a depository for segregated initial margin, IECA stated that it should not, and added that if the Commission wishes to educate counterparties on custodian credit characteristics and risks, it could hold roundtables from time to time and publish the transcripts.[65] The Commission is retaining the requirement that a custodian be a legal entity independent of both the SD or MSP, and the counterparty. It does not believe that a roundtable is necessary at this time.[66]

D. Regulation 23.703—Investment of Segregated Initial Margin

As proposed, the Commission is amending Regulation 23.703 to eliminate the requirement that investment of margin that is segregated pursuant to an election under Regulation 23.701 may only be done in a manner consistent with Regulation 1.25. As originally adopted, Regulation 23.703 requires initial margin segregated pursuant to subpart L to be invested consistent with Regulation 1.25.[67] Paragraph (b) provides that, subject to consistency with Regulation 1.25, the SD or MSP and the counterparty may enter into any commercial arrangement, in writing, regarding the investment of margin and allocation of resulting gains and losses. Regulation 1.25 sets forth standards for investment of customer funds by a futures commission merchant (''FCM'') or DCO in the context of exchange-traded futures and cleared swaps. When originally proposing Regulation 23.703, the Commission expressed its view that Regulation 1.25 ''has been designed to permit an appropriate degree of flexibility in making investments with segregated property, while safeguarding such property for the parties who have posted it, and decreasing the credit, market, and liquidity risk exposures of the parties who are relying on that margin.'' [68] As discussed below, after review of the comments, the Commission confirms the rationale articulated for proposing the amendments to Regulation 23.703, and therefore, is adopting the amendments as proposed.

A suggestion in response to the Project KISS initiative noted that Regulation 1.25 is designed to protect exchange customers for which margin investment decisions are outside of their control.[69] Regulation 1.25 includes fairly extensive and specific requirements as to the mechanisms for holding and investing margin and the qualitative aspects of the investments held. With respect to initial margin for uncleared swaps that is not held in accordance with Regulation 23.157 or with the Prudential Regulator Margin Rules, the margin investment decisions are typically a matter of contract subject to negotiation between the parties. As such, each counterparty has a voice in how the initial margin may be invested.[70]

In addition, the terms of most exchange-traded and cleared products are standardized and the customer's primary relationship with the FCM or DCO centers upon the trading and clearing of those standardized products. Conversely, over-the-counter swaps, by their nature, tend to be more customized and are often part of a broader financial relationship. For example: Interest rate swaps with end-users are often designed to match maturities of loans or bonds, with the rate of the swap tied to the rate on the loan or bond; commodity swaps often hedge the counterparty's physical commodity production or consumption risks that arise from a particular commercial enterprise; and foreign exchange swaps often hedge an entity's exposure to cross-border commercial transactions. In each case, the SD or MSP sometimes plays additional financial roles, such as brokering physical commodity purchases or sales, providing a loan or other credit or liquidity support, or acting as a correspondent bank. Accordingly, each counterparty, particularly nonfinancial end-user counterparties, may find better transactional efficiencies and may be better served and protected in related credit transactions if the types of collateral and the investment procedures and mechanisms used are determined through bilateral negotiation by the parties.[71]

In the preamble to the Proposal, the Commission stated that, given the greater breadth and variability, both in the terms and purposes of uncleared swaps and in the nature of the relationship between the counterparty and the SD or MSP, a regulation that provides greater flexibility for the parties to negotiate appropriate initial margin investment terms will, in most cases, better serve the parties' interests. For the same reasons, allowing greater flexibility may also encourage more counterparties to elect to segregate pursuant to subpart L.[72]

The Commission also recognized that in some circumstances, nonfinancial end-user counterparties might have less negotiating leverage with a sophisticated SD or MSP.[73] However, the regulations as originally adopted give little or no flexibility for

[61] *See* 83 FR at 36488.

[62] IFCS at 3.

[63] *Id.*

[64] IECA at 7.

[65] IECA at 8–9.

[66] If, in the future, the Commission becomes aware of problems resulting from poorly selected custodians it will consider hosting a roundtable or other appropriate outreach to remedy any such issues.

[67] 17 CFR 1.25.

[68] *See* 75 FR at 75434.

[69] *See* SIFMA Letter at 4.

[70] *See* 83 FR at 36488.

[71] *See* 83 FR at 36488.

[72] *Id.*

[73] *Id.*

counterparties and SDs or MSPs to negotiate mutually beneficial terms and to consider other factors such as the broader financial relationship between the parties. For nonfinancial end-user counterparties, the segregation of initial margin is at their discretion. If these counterparties have a voice in how segregated initial margin is invested, the returns of which they will often receive, they may be more likely to elect to require segregation.[74]

ISDA/SIFMA stated that ''[b]y taking steps to remove unnecessary requirements regarding annual notices, disclosures and Rule 1.25 limitations which prevent counterparties from negotiating preferred terms regarding the investment of segregated collateral, among other proposed amendments, the Commission is furthering its goal to streamline overly burdensome rules in a manner more consistent with market practice, while still achieving its regulatory oversight objectives.'' [75] IFCS supported the Proposal's ''allowance for more flexibility in the requirements for segregated margin and investment of segregated margin,'' describing the existing requirements as overly prescriptive and welcoming the opportunity for bilateral negotiations between sophisticated market participants.[76] In response to the Commission's question regarding how the requirement that margin that is segregated pursuant to an election under Regulation 23.701 may only be invested consistent with Regulation 1.25 has impacted counterparties' decisions to make an election under Regulation 23.701, IECA stated that because ''the right to require segregation is so rarely exercised, any response to this question would at best be anecdotal.'' [77]

E. Regulation 23.704—Requirements for Non-Segregated Margin

As proposed, the Commission is amending Regulation 23.704 by placing on the SD or MSP as an entity the obligation to report on a quarterly basis to counterparties that do not elect to require segregation of initial margin (instead of obligating the firm's CCO specifically). A further amendment to paragraph (b) of Regulation 23.704 eliminates the phrase ''with respect to each counterparty.'' Existing Regulation 23.704(a) requires the CCO of each SD or MSP to report quarterly to each counterparty that does not elect segregation of initial margin on whether or not the SD's or MSP's back office procedures relating to margin and collateral requirements failed at any time during the previous calendar quarter to comply with the agreement of the counterparties.[78] As discussed below, after review of the comments, the Commission confirms the rationale articulated for proposing the amendments to Regulation 23.704, and therefore, is adopting the amendments as proposed.

In the preamble to the Proposal, the Commission expressed its belief that it is unnecessary to specify that the CCO be the individual that makes such reports, so long as the information is provided to counterparties. For many firms, middle or back office staff, not the CCO, implements collateral management pursuant to the terms of each collateral management agreement. Those individuals are therefore better situated to assess compliance with agreements and to provide the quarterly report.[79] Accordingly, there are likely personnel at each SD or MSP other than the CCO who are better situated to more accurately and efficiently provide the report.[80] The Commission therefore proposed to require that the SD or MSP make the reports without specifying any particular person to perform that function. The Commission further proposed to clarify the language regarding timing of the required reports to eliminate uncertainty as to the regulation's meaning. With respect to paragraph (b) of the regulation, the Commission proposed to specify that the reports required under paragraph (a) need be delivered only to counterparties who choose not to require segregation (by removing the phrase ''with respect to *each* counterparty'') consistent with the statutory authority underlying this requirement.[81]

IFCS generally supported the changes to Regulation 23.704 while urging the Commission to continue to evaluate the regulation.[82] NFA and IFCS stated their support for eliminating the requirement that an SD's or MSP's CCO be the individual to issue the quarterly report regarding back office compliance. NFA noted that eliminating the requirement will provide greater flexibility,[83] and IFCS stated that eliminating the requirement does not lessen the burden but only shifts it to another corporate department.[84]

IFCS and ISDA/SIFMA stated that the quarterly report does not provide the customer protection benefits the Commission intended to achieve, and urged that instead of requiring quarterly reporting, the Commission should require an SD or MSP to report only when issues of non-compliance are present.[85] NFA asked the Commission to clarify the language of proposed Regulation 23.704(a) to indicate whether a quarterly report is required in those instances when an SD or MSP is and is not in compliance with an agreement with a counterparty.[86] The Commission notes that the statute specifically requires an SD or MSP to report quarterly to any counterparty that does not elect segregation of initial margin for uncleared swaps ''that the back office procedures of the [SD or MSP] relating to margin and collateral requirements are in compliance with the agreement of the counterparties.'' [87] Accordingly, an SD or MSP is required to ensure that its back office procedures are in compliance with the agreement with the counterparty and to report that fact on a quarterly basis, whether or not such procedures are properly carried out on an ongoing basis.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[88] Whenever an agency publishes a general notice of proposed rulemaking for any regulation, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[89] a regulatory flexibility analysis or certification typically is required.[90] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small

[74] *Id.*

[75] ISDA/SIFMA at 3.

[76] IFCS at 3.

[77] IECA at 9 [footnote omitted].

[78] Consistent with CFTC Staff Letter 14–132, supra n.8, the Commission confirms that the reporting requirement under Regulation 23.704 does not apply if no initial margin will be required as part of the swap transaction.

[79] Any potential conflicts of interest on the part of such individuals are mitigated by the oversight function of the CCO with respect to the firm's overall regulatory compliance.

[80] The Commission notes that the CCO continues to be responsible, under Regulation 3.3, to report in the CCO annual report any material non-compliance issues involving back office procedure relating to margin and collateral requirements.

[81] *See* 83 FR at 36489.

[82] IFCS at 3.

[83] NFA at 2.

[84] IFCS at 3–4.

[85] IFCS at 3–4; ISDA/SIFMA at 4.

[86] NFA at 3.

[87] 7 U.S.C. 6s(*l*)(4).

[88] 5 U.S.C. 601 *et seq.*

[89] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[90] *See* 5 U.S.C. 601(2), 603, 604, and 605.

entities in accordance with the RFA.[91] The Commission has previously established that SDs, and MSPs, and eligible contract participants[92] are not small entities for purposes of the RFA.[93]

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

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (''PRA'')[94] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring a collection of information as defined by the PRA. The rule amendments adopted today would result in such a collection, as discussed below. A person is not required to respond to a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). The rule amendments include a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is ''Disclosure and Retention of Certain Information Relating to Swaps Customer Collateral, OMB control number 3038–0075.''[95] Collection 3038–0075 is currently in force with its control number having been provided by OMB.

The Commission is revising collection 3038–0075 to incorporate changes to reduce the number of notices an SD or MSP must provide to its counterparties with respect to the rights of such counterparties to segregate initial margin for uncleared swaps. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require approval of OMB under the PRA.

2. Modification of Collection 3038–0075

The rule amendments adopted today modify collection 3038–0075 by eliminating the requirement that the notification of the right to segregate be provided on an annual basis to a specified officer of the counterparty such that the notice would only need to be provided once to each counterparty at the beginning of the first non-cleared swap transaction that provides for the exchange of initial margin. The Commission originally estimated that each SD and MSP would, on average, provide the segregation notice to approximately 1,300 counterparties each year and that the burden for preparing and furnishing the notice would be 2 hours, for an annual burden of 2,600 hours.[96] The Commission now estimates that each SD and MSP will, on average, have approximately 300 new counterparties each year for a total burden of 600 hours per registrant. The Commission received no comments regarding its discussion of the PRA burden analysis in the preamble to the Proposal. Accordingly, the Commission is revising its overall burden estimate associated with Regulation 23.701 for this collection by reducing the per registrant annual burden by 2,000 hours. The Commission further estimates that there are 103 SD/MSPs and that the aggregate total burden hours associated with Regulation 23.701 is 61,800. The Commission continues to estimate that Regulation 23.704 would require a total of approximately 2,600 disclosures and 798 hours per year per entity. However, the Commission is adjusting its estimate of the total annual responses and burden hours to reflect an increase by one of the number of respondents. The Commission now estimates that approximately 267,800 total annual responses (which is based on 103 SD/MSPs and the 2,600 disclosures per year per entity) would require total annual burden hours of 82,194.[97]

C. Cost-Benefit Considerations

1. Background

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[98] CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. With respect to the rule amendments discussed above, the Commission has considered the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors, and sought comments from interested persons regarding the nature and extent of such costs and benefits.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swap market functions internationally, with many transactions involving U.S. firms occurring across different international jurisdictions, with some SDs, MSPs, and their counterparties organized outside the U.S., and other entities operating both within and outside the U.S., and commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion below of the costs and benefits of the regulations being adopted refers to their effects on all subject swaps activity, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).

2. Regulations 23.700, 23.701, 23.702, and 23.703—Notification of Right to Initial Margin Segregation

The baseline for these cost and benefit considerations is the status quo, which is existing market conditions and practice in response to the requirements of current Regulations 23.700, 23.701, 23.702, and 23.703.[99] Subpart L: (1) Requires SDs or MSPs to notify counterparties of the right to segregate initial margin; (2) establishes certain procedures regarding the notification; and (3) establishes certain requirements for the initial margin segregation arrangements.

The rule amendments adopted herein are intended to provide a more flexible approach that reduces some regulatory burdens that provide little or no corresponding benefit. The definition of ''Margin'' is eliminated because it will no longer be needed. The rule amendments would also revise when the segregation notice is required. Additionally, the amendments eliminate the requirements that the SD or MSP: (1)

[91] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[92] Eligible contract participants, as defined in CEA section 1a(18), 7 U.S.C. 1a(18).

[93] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[94] 44 U.S.C. 3501 *et seq.*

[95] *See* OMB Control No. 3038–0075, *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0075#.*

[96] *See* 78 FR at 66631.

[97] The change in the estimated total annual burden hours for Regulation 23.704 from the original estimate reflects both a change in the total number of registrants and a slight correction to the calculation to correct for arithmetical errors.

[98] 7 U.S.C. 19(a).

[99] *See* 78 FR at 66632–36 (discussing the cost-benefit considerations with regard to the segregation regulation). The Commission believes that the changes to Regulation 23.704 do not change the costs or benefits originally determined when that regulation was adopted.

Provide the segregation notice to an officer of the counterparty with specific qualifications, and (2) obtain the counterparty's confirmation of receipt of the segregation notice. Finally, the rule amendments as adopted allow the parties to establish the notice of change of control provisions and the commercial arrangements for investment of segregated collateral by contract instead of imposing specific requirements.

(i) Cost and Benefit Considerations

The general purpose of the adopted rule amendments is to reduce burdens and improve the benefits intended by subpart L. The Commission believes that the amendments would not impose any new requirements on registrants and instead would reduce or make the regulations more flexible, allowing market participants to use standard market practices regarding the implementation of the initial margin segregation requirements. The simplification of the notification requirements will likely reduce the time needed to complete the notification process. The simplification of the notification requirements may also facilitate more resource-efficient development and maintenance of customer relationships by reducing the search costs for some of the removed items. The rule amendments will also reduce costs by eliminating the requirements for those swaps that must comply with the Prudential Regulator Margin Rules mandatory margin requirements. In addition, the amendments as adopted will provide benefits to the parties to swaps by allowing the parties to establish by contract the terms for collateral management and for change in control and investment of segregated initial margin in a manner that better suits their business needs. To the extent the parties will be able to negotiate more efficient segregation investment arrangements that generate higher returns that are passed on to the counterparty, as is most often the case for uncleared swaps, the parties will benefit. The Commission believes that the simplification of the requirements and greater flexibility will therefore encourage more counterparties to elect to segregate initial margin.

As noted above, in some circumstances, nonfinancial end-user counterparties might have less negotiating leverage when negotiating the terms of segregation agreements with experienced SDs or MSPs. Reducing the prescriptive requirements in the current rule could therefore reduce protections for the counterparties. However, it is not clear how incentives or disincentives may impact the negotiating choices of SDs and MSPs as well as the counterparties and therefore the extent to which the requirements provide protections. For example, regarding the choice of investments, the SD or MSP may seek to restrict investments to the most liquid investments that could be easily liquidated if the counterparty defaults. Those liquid investments, which would likely be similar to the investments permitted under Regulation 1.25, may in turn generate lower returns passed on to the SD's or MSP's counterparties. Conversely, the current regulations give little or no flexibility for counterparties and SDs or MSPs to negotiate mutually beneficial terms and consider other factors such as the broader financial relationship between the parties. Furthermore, for nonfinancial end-user counterparties, the segregation of initial margin is discretionary. If the counterparties have no voice in how segregated initial margin is invested, there may be less incentive for the counterparty to elect to require segregation. In addition, because the counterparty will no longer receive an annual notice of its right to segregation, this may result in a counterparty not exercising its right, as a result of new or other employees taking over this responsibility; however, as noted above, once a counterparty selects an option, it rarely changes. Lastly, there is less information given to the counterparty (*i.e.,* custodial prices, including a non-affiliated custodian); however, as noted above, this information is typically not comparable and therefore, may be misleading, as each custodial agreement is privately negotiated.

The Commission believes that the rule amendments to subpart L might lead to reduced costs for registrants, because they will no longer have to comply with some of the more prescriptive requirements imposed by the regulations. The Commission is, however, unable to quantify the potential cost savings because the cost savings depend on numerous factors that are particular to each SD or MSP and each counterparty relationship. For example, the factors affecting the costs involved could include: The size and complexity of an SD's dealing activities, the actual number of swaps that would be affected by this rulemaking, the complexity of the swap transactions, the level of sophistication of each counterparty, the degree to which automated notice technologies may be used to satisfy these requirements, and the nature of the custodial and investment documents in particular segregation arrangements.

(ii) Section 15(a) Considerations

a. Protection of Market Participants and the Public

Subpart L is intended to provide counterparties to SDs and MSPs with notice of the right to elect to segregate initial margin. The Commission recognizes that the amendments adopted to make the regulations less prescriptive might potentially negatively impact the goal of protecting market participants by removing specific requirements for the segregation agreements. However, the Commission is of the view that the intended purpose and benefits of subpart L remain in place because the rule amendments as adopted continue to implement the statutory requirements. Each counterparty will still receive notification of its right to segregate its initial margin. In addition, the parties and the selected custodian will now have the flexibility to establish requirements for margin segregation through negotiated contracts that meet their respective needs, thereby providing market participants with the flexibility and opportunity to protect themselves better by contract. Finally, the greater flexibility provided by these amendments may increase the voluntary use of initial margin segregation by counterparties, a process that was intended to provide better protection for the counterparty in the event of default by the SD or MSP.

The Commission acknowledges that by eliminating the requirement to reinvest initial margin in Regulation 1.25 liquid securities, it may be lowering protections to SDs or MSPs and their counterparties, which may affect other market participants and the public. The Commission believes that this change provides market participants with the ability to privately negotiate the terms of reinvestment. The private terms of reinvestment allow each party to assess its risk tolerance and enter into a written agreement that reflects this tolerance and possibly earn higher anticipated returns on excess margin than potential returns from Regulation 1.25 liquid securities investments.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

Subpart L promotes the financial integrity of markets by providing for the protection of counterparty collateral and by mitigating systemic risk that may result from the loss of access to the collateral in the event of a counterparty

default. As discussed above, given that registrants will still be expected to enter into segregation arrangements with counterparties that elect to segregate, and, with adoption of the rule amendments to subpart L, registrants will now be able to develop segregation arrangements tailored to their businesses and swap transactions, the Commission is of the view that the amendments likely will have a positive impact on market integrity.

The Commission believes that the rule amendments will not have a significant impact on the competitiveness or efficiency of markets because this rulemaking affects only how collateral is protected and segregated, and not how market participants elect to trade. In addition, the Commission believes that not requiring SDs or MSPs to provide custodial pricing information to their counterparties may have an impact on the efficiency, competitiveness, and financial integrity of the markets, as discussed above, although the effect of this information might not have a consequential impact on the decisions of swap counterparties.

c. Price Discovery

The Commission believes the rule amendments as adopted will not have a significant effect on price discovery.

d. Sound Risk Management

Subpart L provides for the management and protection of counterparty collateral and therefore mitigates the risk of loss of access to the collateral, which loss can have an adverse impact on registrants, counterparties and the U.S. financial markets. As discussed, the rule amendments adopted herein remove certain prescriptive requirements, but do not alter the overall principles of the existing requirements of subpart L. Therefore, the Commission is of the view that sound risk management practices will not be adversely impacted by these rule amendments. However, as noted above, the Commission acknowledges that by eliminating the requirement to reinvest initial margin in Regulation 1.25 liquid securities, the rule may be lowering protections to SDs or MSPs and their counterparties, which affects other market participants and the public. On the other hand, the Commission believes that the rule provides market participants with the ability to privately negotiate the terms of reinvestment, thereby allowing each party to assess its risk tolerance and enter into an agreement that reflects this tolerance and to earn higher anticipated returns on excess margin than Regulation 1.25 liquid securities tend to earn.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for the rule amendments as adopted.

(iii) Request for Comment

The Commission invited comment on its preliminary consideration of the costs and benefits associated with the proposed changes to subpart L, especially with respect to the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commission's preliminary cost-benefit considerations, the Commission encouraged commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal. The Commission also specifically requested comment on the following questions:

- To what extent do the proposed amendments reduce or increase burdens and costs for SDs or MSPs or their counterparties?

Commenters have supported the Commission's assessment that finalizing the rule amendments will eliminate burdens on SDs and MSPs. Specifically, IECA stated that the current rules have been unnecessarily burdensome and asserted that by eliminating, for example, Regulation 23.701(d), market participants will save significant costs and avoid risk and confusion.[100] IFCS stated its belief that many of the requirements under the current regulations create unnecessary operational and administrative burdens on swap dealers that outweigh the intended protections afforded to swap counterparties.[101] ISDA/SIFMA stated that the Proposal will meaningfully reduce unnecessary costs and burdens associated with the rule, without diminishing the Commission's ability to meet its regulatory duties. ISDA/SIFMA added that, based on their members' experience, the current initial margin segregation requirements are overly prescriptive and remove the opportunity for bilateral negotiations between sophisticated market participants.[102]

- To what extent do the proposed amendments impact collateral management risk considerations?

The Commission is persuaded further by commenters that it is appropriate to make its rules less prescriptive and allow more bilateral negotiations between swap counterparties. NFA stated that it agrees with the Commission's goal of reducing unnecessary burdens on market participants, facilitating more efficient swap execution and potentially encouraging more segregation of collateral.[103] ISDA/SIFMA stated that, based on their members' experience, the current initial margin segregation requirements are overly prescriptive and remove the opportunity for bilateral negotiations between sophisticated market participants who should be allowed to determine what collateral arrangements are most appropriate for their circumstances.[104]

- Are counterparties to SDs or MSPs at a substantial disadvantage when negotiating the terms for segregation arrangements that would no longer be required if the proposed amendments are adopted? Would that disadvantage cause them to receive unfair terms on those segregation arrangements? Are there mitigating factors?

The Commission is sympathetic to comments that swap counterparties do not require any additional protections from the CFTC given their requisite levels of sophistication. IFCS stated its support for increased flexibility on the requirements for segregated margin in Regulation 23.702. IFCS believes the current regulations are overly prescriptive and welcomes the opportunity for bilateral negotiations between sophisticated market participants who are, by definition, deemed to be able to protect their own interests.[105]

- Would the elimination of the requirement to list at least one non-affiliated custodian and the cost of the custodial services have an effect on the selection of an independent custodian and the cost of the services to the non-SD/MSP counterparty? If yes, please explain.

The only commenter to address this issue, IFCS, agrees with the Commission's decision to remove this condition. IFCS said that they supported eliminating the requirement, adding that costs associated with segregation are largely controlled by the third-party custodian and may vary for each segregation agreement, which, together, make it difficult to provide meaningful pricing information in the notification.[106]

[100] IECA at 2.

[101] IFCS at 2.

[102] ISDA/SIFMA at 3.

[103] NFA at 1.

[104] ISDA/SIFMA at 3.

[105] IFCS at 3.

[106] IFCS at 2.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the Act.'' [107]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws. No comments were received in response to this request.

The Commission has considered whether the adopted rule amendments are anticompetitive and has identified no anticompetitive effects. The Commission requested comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are. No comments were received in response to this request.

Because the Commission has determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requested comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule. No comments were received in response to this request.

List of Subjects in 17 CFR Part 23

Custodians, Major swap participants, Margin, Segregation, Swap dealers, Swaps, Uncleared swaps.

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

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

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

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

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

■ 2. Revise subpart L to read as follows:

Subpart L—Segregation of Assets Held as Collateral in Uncleared Swap Transactions

Sec.
23.700 Definitions.
23.701 Notification of right to segregation.
23.702 Requirements for segregated initial margin.
23.703 Investment of segregated initial margin.
23.704 Requirements for non-segregated margin.

Subpart L—Segregation of Assets Held as Collateral in Uncleared Swap Transactions

§ 23.700 Definitions.

As used in this subpart:

Initial Margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

Segregate means to keep two or more items in separate accounts, and to avoid combining them in the same transfer between two accounts.

Variation Margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

§ 23.701 Notification of right to segregation.

(a) At the beginning of the first swap transaction that provides for the exchange of Initial Margin, a swap dealer or major swap participant must notify the counterparty that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703, except in those circumstances where segregation is mandatory pursuant to § 23.157 or rules adopted by the prudential regulators pursuant to section 4s(e)(2)(A) of the Act.

(b) The right referred to in paragraph (a) of this section does not extend to Variation Margin.

(c) If the counterparty elects to segregate Initial Margin, the terms of segregation shall be established by written agreement.

(d) A counterparty's election, if applicable, to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

§ 23.702 Requirements for segregated initial margin.

(a) The custodian of Initial Margin, segregated pursuant to an election under § 23.701, must be a legal entity independent of both the swap dealer or major swap participant and the counterparty.

(b) Initial Margin that is segregated pursuant to an election under § 23.701 must be held in an account segregated for, and on behalf of, the counterparty, and designated as such. Such an account may, if the swap dealer or major swap participant and the counterparty agree, also hold Variation Margin.

(c) Any agreement for the segregation of Initial Margin pursuant to this section shall be in writing, shall include the custodian as a party, and shall provide that any instruction to withdraw Initial Margin shall be in writing and that notification of the withdrawal shall be given immediately to the non-withdrawing party.

§ 23.703 Investment of segregated initial margin.

The swap dealer or major swap participant and the counterparty may enter into any commercial arrangement, in writing, regarding the investment of Initial Margin segregated pursuant to § 23.701 and the related allocation of gains and losses resulting from such investment.

§ 23.704 Requirements for non-segregated margin.

(a) Each swap dealer or major swap participant shall report to each counterparty that does not choose to require segregation of Initial Margin pursuant to § 23.701(a), on a quarterly basis, no later than the fifteenth business day after the end of the quarter, that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(b) The obligation specified in paragraph (a) of this section shall apply no earlier than the 90th calendar day after the date on which the first swap is transacted between the counterparty and the swap dealer or major swap participant.

Issued in Washington, DC, on March 28, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

[107] *See* 7 U.S.C. 19(b).

Appendices to Segregation of Assets Held as Collateral in Uncleared Swap Transactions—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman J. Christopher Giancarlo

This final rule is another Project KISS proposal simplifying and reducing burdens by revisiting our rules based on staff implementation experience and public comment. Today's amendments will remove overly burdensome and prescriptive conditions for providing notice to counterparties of their right to segregate initial margin for uncleared swaps and the commercial arrangement between the parties regarding the investment of segregated initial margin.

Staff experience shows that counterparties rarely elect to segregate initial margin, even though the option to do so was provided for in the Commodity Exchange Act and in the CFTC's Regulations 23.700 through 23.704. Enabling the election of segregation is a bipartisan goal, starting with a unanimous Commission rulemaking by a previous commission. By reducing the burdens and prescriptiveness of these rules, and providing additional flexibility for the parties to engage in written segregation arrangements to fit their needs, as the final rule does here, more counterparties may opt to use this provision and avail themselves of any benefits of doing so.

Appendix 3—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur with the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') approval of amendments to subpart L of the Commission's Regulations (''Segregation of Assets Held as Collateral in Uncleared Swap Transactions'' consisting of Regulations 23.700 through 23.704), which implement section 4s(*l*) of the Commodity Exchange Act (''CEA'' or the ''Act''). The amendments to subpart L respond to ongoing concerns and confusion created by the finalization of the CFTC and Prudential Regulator Margin Rules and CFTC interpretive guidance. I voted for the proposal of the subpart L amendments. However, I expressed reservations about the Commission's proposal to extend its prior interpretation of CEA section 4s(*l*) concerning the timing and frequency of required notifications of swap counterparties regarding their right to segregate initial margin for uncleared swaps.[1] I continue to believe that the Commission's rationale in support of interpreting CEA section 4s(*l*) to require a single, one-time notification to a counterparty of their right to require segregation of any initial margin may be based on an incomplete record; it is nevertheless based on the record before us. The Commission sought comment from the public on the appropriateness of the proposed amendments and received just four comment letters. However, none of the letters addressed whether and how requiring the notice to be provided annually has actually impacted or effected decision making by counterparties.

I am disappointed that the Commission is declining to specify what constitutes the beginning of the first swap transaction or to proscribe when trading may commence following the initial notification.[2] In an effort to remain flexible, the Commission is creating uncertainty that may ultimately lead to additional rulemaking. Where the record suggests that need for the current amendment to the notification requirement in CFTC Regulation 23.701(a)(i) may be a consequence of a stakeholder-led compliance effort, I believe the Commission ought not to risk making the same mistake twice.

Appendix 4—Statement of Commissioner Dan M. Berkovitz

The final rule amends CFTC regulations giving certain swap counterparties the right to require initial margin segregation. I support the amendments.

In this instance, real world experience in implementing new regulations demonstrates that modifying certain of the regulatory requirements may help better achieve the intended customer protection goals. An added benefit of fine-tuning the regulations is a reduction in costs for registrants without a reduction in customer protections.

CFTC regulations 23.701 through 23.704 (''Margin Segregation Rules'') set forth certain requirements concerning the right of counterparties of swap dealers to elect segregation of initial margin posted to secure uncleared swaps. These regulations support an important safety measure for mostly non-financial swap counterparties by providing them the right to have collateral posted as initial margin for swaps to be held in segregated accounts at third-party custodians. Segregation protects the counterparty by keeping the counterparty's collateral, and the collateral posted by the swap dealer to cover obligations to the counterparty, separate from the swap dealer's other assets and liabilities in the event of a bankruptcy. The regulations currently in effect provide detailed requirements regarding the delivery of notices by swap dealers to their counterparties of the right to segregate as well as specific, limited investment choices for the collateral.

The Margin Segregation Rules were adopted in 2013. Since that time, two things have happened to warrant changes to the regulations. First, in 2016, the Commission adopted its uncleared swaps margin regulations. The margin rules effectively superseded regulations 23.702 and 23.703 regarding investment of margin funds for a large majority of affected swap counterparties. Second, as detailed in the final release, experience from implementing the Margin Segregation Rules demonstrated that certain aspects of these rules have provided little or no benefit. Almost no counterparties are electing to segregate initial margin in the manner provided by the Margin Segregation Rules with fewer than five counterparties making the election at each of the swap dealers examined for this issue. In addition, some of the specific requirements of the rule added unnecessary costs and the rule's purpose could be achieved through more efficient means.

The amendments in the final rule will reduce the burdens of the rule's notice requirements while assuring that each counterparty is properly notified of the important right to segregate initial margin at the most effective time in the swap documentation process. The final rule also provides the parties with greater flexibility to negotiate mutually beneficial terms for the segregation arrangements based on the specific needs of the counterparties. This flexibility may encourage more counterparties to elect segregation. In addition, the final rule will increase regulatory efficiency by reducing unnecessary notices and procedural requirements that must be documented and examined by the National Futures Association in their oversight of swap dealers.

The reduced costs and greater flexibility that will result from the final rule should benefit both swap dealers and end users in uncleared swap transactions. The comment letters that the Commission received on the notice of proposed rulemaking all provided reasoned support for the proposal. I therefore support today's final rule.

[FR Doc. 2019–06424 Filed 4–2–19; 8:45 am]

BILLING CODE 6351–01–P

[1] Segregation of Assets Held as Collateral in Uncleared Swap Transactions, 83 FR 36484, 36493 through 36494 (proposed July 30, 2018).

[2] Segregation of Assets Held as Collateral in Uncleared Swap Transactions, section II.B. (to be codified at 17 CFR part 23).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release No. 34–85437]

Public Company Accounting Oversight Board Hearing Officers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is revising its regulations with respect to the method by which hearing officers of the Public Company Accounting Oversight Board (''Board'' or ''PCAOB'') are appointed and removed from office. Specifically, the Commission is adopting a rule expressly requiring that the appointment or removal of a PCAOB hearing officer be subject to Commission approval.

DATES: *Effective Date:* April 3, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Jacoby, Senior Special Counsel, at (202) 551–5337, or Giles Cohen, Acting Chief Counsel, at (202) 551–2512, in the Office of the Chief Accountant, or Lisa Helvin, Counsel to the General Counsel, at (202) 551–5195, or Bryant Morris, Assistant General Counsel, at (202) 551–5153, in the Office of the General Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act'' or the ''Act''),[1] established the PCAOB to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.[2] The Act vests the Commission with comprehensive oversight and enforcement authority over the PCAOB. It grants the Commission authority to, among other things, appoint and remove the members of the PCAOB, approve PCAOB rules and professional standards, and oversee the PCAOB's exercise of certain assigned powers and duties.[3]

Section 105 of the Sarbanes-Oxley Act authorizes the Board to investigate and, if necessary, initiate disciplinary action against registered public accounting firms and their associated persons.[4] Upon initiating such an action, the Board may hold a hearing to determine whether a registered public accounting firm or associated person committed, and should be disciplined for, any violation of the Sarbanes-Oxley Act, the securities laws, the Commission's rules, the Board's rules, or professional standards.[5]

The Sarbanes-Oxley Act directs the Board to promulgate rules governing its investigations and adjudications.[6] The Board has done so. As relevant here, those rules provide that once the Board has issued an order instituting proceedings, or after a registration applicant has requested a hearing, a hearing officer will be assigned to preside over the proceeding.[7] The hearing officer is granted ''the authority to do all things necessary and appropriate to discharge his or her duties,'' including: Issuing accounting board demands; receiving and ruling on the admissibility of evidence; generally ''regulating the course of a proceeding and the conduct of the parties and their counsel''; holding pre-hearing and other conferences; ruling on motions; and preparing an initial decision.[8] The role of the PCAOB hearing officer thus closely resembles that of the Commission's administrative law judges (''ALJs'').

On June 21, 2018, the United States Supreme Court in *Lucia* v. *SEC* considered a challenge to the method by which the Commission's ALJs were appointed, holding that because the ALJs exercise ''significant authority pursuant to the laws of the United States,'' they are ''Officers of the United States'' who must be appointed in the manner prescribed by the Constitution's Appointments Clause—by the President, a court of law, or head of a department, such as the Commission.[9] In so holding, the Court followed its earlier decision in *Freytag* v. *Commissioner,* in which it determined that, given the powers they exercise, special trial judges of the United States Tax Court are also constitutional officers.[10]

While PCAOB hearing officers are similarly vested with ''the authority needed to ensure fair and orderly adversarial hearings,'' [11] there are notable differences between the powers they exercise and those exercised by Commission ALJs and Tax Court special trial judges. Unlike the other adjudicators, for example, PCAOB hearing officers are not authorized to administer oaths or punish contemptuous conduct.[12] Moreover, to date, no court has held that PCAOB hearing officers must be appointed as inferior officers under the Appointments Clause.[13] Nevertheless, to remove any doubt about the constitutional status of PCAOB hearing officers, the Commission hereby amends 17 CFR part 202, subpart A (Regulation P) to require that the Commission, acting as head of a department, must approve both the appointment and the removal from office of any PCAOB hearing officer before any such action may take effect.[14]

We believe this requirement is consistent with both the Constitution and the oversight and appointment authority Congress has granted the Commission. The Commission has the constitutional authority to both appoint and remove from office the inferior officers under its supervision.[15] Congress has also authorized the Commission to appoint inferior officers ''necessary for carrying out its functions under the securities laws,'' including those specified in the Sarbanes-Oxley Act.[16] Further, pursuant to the Sarbanes-Oxley Act, Congress has granted the Commission comprehensive oversight and enforcement authority over the PCAOB, and it has specified that the Board's appointment of employees and its delegation of functions to such employees are subject to the Commission's oversight.[17]

[1] 15 U.S.C. 7201 *et seq.*

[2] 15 U.S.C. 7211(a).

[3] 15 U.S.C. 7211–7219.

[4] 15 U.S.C. 7215.

[5] *Id.* The Board is authorized to delegate the hearing function to an employee, pursuant to Section 101(f)(4) and (g)(2), 15 U.S.C. 7211(f)(4) & (g)(2).

[6] 15 U.S.C. 7215.

[7] PCAOB Bylaws and Rules, Section 5-Investigations and Adjudications, available at *https://pcaobus.org//Rules/Documents/Section_5.pdf* (effective pursuant to SEC Release No. 34–49704, File No. PCAOB–2003–07, 2004 WL 1439833 (May 14, 2004)).

[8] PCAOB Rule 5200(b); *see also* Guide to Proceedings Before a PCAOB Hearing Office, available at *https://pcaobus.org/Enforcement/Adjudicated/Pages/guide-to-proceedings-before-PCAOB-hearing-officer.aspx* (''A hearing on the merits before a PCAOB Hearing Officer is, in many respects, similar to a trial before a judge in state or federal court.'').

[9] 138 S. Ct. 2044, 2050–51 (2018); Art. II, § 2, cl.2.

[10] *Lucia,* 138 S. Ct. at 2053–54 (citing *Freytag* v. *Comm'r,* 501 U.S. 868 (1991)).

[11] *Lucia,* 138 S. Ct. at 2053.

[12] *Compare, e.g.,* PCAOB Rules 5103, 5105, 5200(b)(1), 5424 (PCAOB hearing officers) *with* 17 CFR 200.14(a)(1) & (2), 200.111(b), 180(a), 232(e), 322 (Commission ALJs) *and Freytag* v. *Comm'r,* 501 U.S. at 881–82 (Tax Court special trial judges).

[13] While the Board is not a governmental entity for statutory purposes, it is "' part of the Government' for constitutional purposes.'' *Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.,* 561 U.S. 477, 485–86 (2010).

[14] On December 20, 2018, the Board adopted amendments to its bylaws and rules (collectively, the ''proposed amendments'') to provide that the PCAOB's appointment and removal of hearing officers are subject to Commission approval. The PCOAB filed the proposed amendments with the Commission on January 29, 2019, and on February 11, 2019, the Commission published notice of this filing. See *https://www.sec.gov/rules/pcaob/2019/34-85090.pdf.*

[15] *See Lucia,* 138 S. Ct. 2044, 2051 & n.3; *Edmond* v. *United States,* 520 U.S. 651, 663 (1997); *see also Free Enter. Fund,* 561 U.S. at 513–14.

[16] 5 U.S.C. 4802(b) (citing 15 U.S.C. 78c(a)(47)); 15 U.S.C. 78d(b).

[17] 15 U.S.C. 7217(a); 15 U.S.C. 7211(f), (g).

This power to appoint—or approve the appointment of—inferior officers carries with it the power to remove those individuals from office. As the Supreme Court has explained, ''the power of removal from office is incident to the power of appointment,'' and thus statutes vesting heads of department with appointment authority are presumed to carry with them removal authority, absent language to the contrary.[18] Here, the relevant statutes provide no such restrictions.[19] Accordingly, the Commission may require that it approve both the appointment and the removal from office of any PCAOB hearing officer before any such action may take effect.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (''APA''),[20] that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date are not applicable. These changes are therefore effective on April 3, 2019. For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act[21] are not applicable. Additionally, the provisions of the Regulatory Flexibility Act,[22] which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[23] Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Exchange Act.

III. Statutory Authority

This rule is adopted pursuant to statutory authority granted to the Commission, including 5 U.S.C. 4802(b), Sections 4(b) and 23(a) of the Exchange Act, 15 U.S.C. 78d(b), and Sections 101 and 107 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211, 7217.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

Text of Rule

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as *COM007*follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

Subpart A—Public Company Accounting Oversight Board (Regulation P)

■ 2. Section 202.150 is added to read as follows:

§ 202.150 Commission approval of appointment or removal from office of Public Company Accounting Oversight Board hearing officers.

The Commission shall approve both the appointment and removal from office of any hearing officer employed by the Public Company Accounting Oversight Board. No action by the Board proposing to appoint or remove from office a hearing officer shall be final absent Commission approval.

By the Commission.

Dated: March 28, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06427 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

[18] *See Keim* v. *United States,* 177 U.S. 290, 293–94 (1900); *Ex parte Hennen,* 38 U.S. (13 Pet.) 230, 259–60 (1839); *Power of the Secretary of the Treasury to Remove Inspectors of Hulls and Bollers,* 10 Op. Att'y Gen. 204, 207–09 (1862); *Tenure of Office of Inspectors of Customs,* 1 Op. Att'y Gen. 459, 459 (1821).

[19] *See* 5 U.S.C. 4802(b); 15 U.S.C. 78d(b); 15 U.S.C. 7217(a); 15 U.S.C. 7211(f), (g); *see also Free Enter. Fund,* 561 U.S. at 510 (Commission may remove members of the Board ''at will'').

[20] 5 U.S.C. 553(b)(3)(A).

[21] 5 U.S.C. 804(3)(C).

[22] 5 U.S.C. 601 *et seq.*

[23] *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notification of determination.

SUMMARY: The following is the analysis and determination of the Commodity Futures Trading Commission (''Commission'') regarding a request by the Australian Prudential Regulation Authority (''APRA'') that the Commission determine that laws and regulations applicable in Australia provide a sufficient basis for an affirmative finding of comparability with respect to margin requirements for uncleared swaps applicable to certain swap dealers (''SDs'') and major swap participants (''MSPs'') registered with the Commission. As discussed in detail herein, the Commission has found the margin requirements for uncleared swaps under the laws and regulations of Australia comparable to those under the Commodity Exchange Act (''CEA'') and Commission regulations.

DATES: This determination was made and issued by the Commission on March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov;* Frank Fisanich, Deputy Director, 202–418–5949, *ffisanich@cftc.gov;* or Lauren Bennett, Special Counsel, 202–418–5290, *lbennett@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to section 4s(e) of the CEA,[1] the Commission is required to promulgate margin requirements for uncleared swaps applicable to each SD and MSP for which there is no U.S. Prudential Regulator (collectively, ''Covered Swap Entities'' or ''CSEs'').[2] The Commission published final margin requirements for such CSEs in January 2016 (''CFTC Margin Rule'').[3]

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

[2] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a U.S. Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable U.S. Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to include: The Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The U.S. Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''U.S. Prudential Regulators' Margin Rule'').

[3] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule,

Subsequently, on May 31, 2016, the Commission published in the **Federal Register** its final rule with respect to the cross-border application of the Commission's margin requirements for uncleared swaps applicable to CSEs (''CFTC Cross-Border Margin Rule'').[4] The CFTC Cross-Border Margin Rule sets out the circumstances under which a CSE is allowed to satisfy the requirements under the CFTC Margin Rule by complying with comparable foreign margin requirements (''substituted compliance''); offers certain CSEs a limited exclusion from the Commission's margin requirements; and outlines a framework for assessing whether a foreign jurisdiction's margin requirements are comparable to the CFTC Margin Rule (''comparability determinations''). The Commission promulgated the CFTC Cross-Border Margin Rule after close consultation with the U.S. Prudential Regulators and in light of comments from and discussions with market participants and foreign regulators.[5]

The Commission considered APRA's prudential standards and public consultation papers, in addition to supplemental materials provided by APRA, in making this determination. The Commission's analysis and comparability determination for Australia regarding the CFTC Margin Rule is detailed below.

II. CFTC Cross-Border Margin Rule

A. Regulatory Objective of Margin Requirements

The regulatory objective of the CFTC Margin Rule is to further the congressional mandate to ensure the safety and soundness of CSEs in order to offset the greater risk to CSEs and the financial system arising from the use of swaps that are not cleared.[6] The primary function of margin is to protect a CSE from counterparty default, allowing it to absorb losses and continue to meet its obligations using collateral provided by the defaulting counterparty. While the requirement to post margin protects the counterparty in the event of the CSE's default, it also functions as a risk management tool, limiting the amount of leverage a CSE can utilize by requiring that it have adequate eligible collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense not only in protecting the CSE but in containing the amount of risk in the financial system as a whole, reducing the potential for contagion arising from uncleared swaps.[7]

However, the global nature of the swap market, coupled with the interconnectedness of market participants, also necessitate that the Commission recognize the supervisory interests of foreign regulatory authorities and consider the impact of its choices on market efficiency and competition, which the Commission believes are vital to a well-functioning global swap market.[8] Foreign jurisdictions are at various stages of implementing margin reforms. To the extent that other jurisdictions adopt requirements with different coverage or timelines, the Commission's margin requirements may lead to competitive burdens for U.S. entities and deter non-U.S. persons from transacting with U.S. CSEs and their affiliates overseas.

B. Substituted Compliance

To address these concerns, the CFTC Cross-Border Margin Rule provides that, subject to certain findings and conditions, a CSE is permitted to satisfy the requirements of the CFTC Margin Rule by instead complying with the margin requirements in the relevant foreign jurisdiction. This substituted compliance regime is intended to address the concerns discussed above without compromising the congressional mandate to protect the safety and soundness of CSEs and the stability of the U.S. financial system. Substituted compliance helps preserve the benefits of an integrated, global swap market by reducing the degree to which market participants will be subject to multiple sets of regulations. Further, substituted compliance builds on international efforts to develop a global margin framework.[9]

The CFTC Cross-Border Margin Rule requires that applicants for a comparability determination provide copies of the relevant foreign jurisdiction's margin requirements[10] and descriptions of their objectives,[11] how they differ from the BCBS/IOSCO Framework,[12] and how they address the elements of the Commission's margin requirements.[13] The applicant must

which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. *See* §§ 23.150 through 23.159, 23.161. The Commission's regulations are found in chapter I of title 17 of the Code of Federal Regulations, 17 CFR parts 1 through 199.

[4] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). The CFTC Cross-Border Margin Rule, which became effective August 1, 2016, is codified in part 23 of the Commission's regulations. *See* § 23.160.

[5] In 2014, in conjunction with re-proposing its margin requirements, the Commission requested comment on three alternative approaches to the cross-border application of its margin requirements: (i) A transaction-level approach consistent with the Commission's guidance on the cross-border application of the CEA's swap provisions, *see* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) (the ''Guidance''); (ii) an approach consistent with the U.S. Prudential Regulators' proposed cross-border framework for margin, *see* Margin and Capital Requirements for Covered Swap Entities, 79 FR 57348 (Sept. 24, 2014); and (iii) an entity-level approach that would apply margin rules on a firm-wide basis (without any exclusion for swaps with non-U.S. counterparties). *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 FR 59898 (Oct. 3, 2014). Following a review of comments received in response to this request for comment, the Commission's Global Markets Advisory Committee (''GMAC'') hosted a public panel discussion on the cross-border application of margin requirements. *See* GMAC Meeting (May 14, 2015), transcript and webcast, available at: *http://www.cftc.gov/PressRoom/Events/opaevent_gmac051415.*

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

[7] *See* CFTC Margin Rule, 81 FR at 689.

[8] In determining the extent to which the Dodd-Frank swap provisions apply to activities overseas, the Commission strives to protect U.S. interests, as determined by Congress in Title VII, and minimize conflicts with the laws of other jurisdictions, consistent with principles of international comity. *See* Guidance, 78 FR at 45300–01 (referencing the Restatement (Third) of Foreign Relations Law of the United States).

[9] In October 2011, the Basel Committee on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO''), in consultation with the Committee on Payment and Settlement Systems and the Committee on Global Financial Systems, formed a Working Group on Margining Requirements to develop international standards for margin requirements for uncleared swaps. Representatives of 26 regulatory authorities participated, including the Commission. In September 2013, the Working Group on Margin Requirements published a final report articulating eight key principles for non-cleared derivatives margin rules. These principles represent the minimum standards approved by BCBS and IOSCO and their recommendations to the regulatory authorities in member jurisdictions. *See* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (updated March 2015) (''BCBS/IOSCO Framework''), available at *http://www.bis.org/bcbs/publ/d317.pdf.*

[10] *See* § 23.160(c)(2)(v).

[11] *See* § 23.160(c)(2)(i).

[12] *See* § 23.160(c)(2)(iii). *See also* § 23.160(a)(3) (defining ''international standards'' as based on the BCBS–ISOCO Framework).

[13] *See* § 23.160(c)(2)(ii) (identifying the elements as: (A) The products subject to the foreign jurisdiction's margin requirements; (B) the entities subject to the foreign jurisdiction's margin requirements; (C) the treatment of inter-affiliate transactions; (D) the methodologies for calculating the amounts of initial and variation margin; (E) the process and standards for approving models for calculating initial and variation margin models; (F) the timing and manner in which initial and variation margin must be collected and/or paid; (G) any threshold levels or amounts; (H) risk management controls for the calculation of initial and variation margin; (I) eligible collateral for initial and variation margin; (J) the requirements of custodial arrangements, including segregation of margin and rehypothecation; (K) margin documentation requirements; and (L) the cross-border application of the foreign jurisdiction's margin regime). Section 23.160(c)(2)(ii) largely tracks the elements of the BCBS/IOSCO Framework but breaks them down into their components as appropriate to ensure ease of application.

identify the specific legal and regulatory provisions of the foreign jurisdiction's margin requirements that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element.[14]

C. Standard of Review for Comparability Determinations

The CFTC Cross-Border Margin Rule identifies certain key factors that the Commission will consider in making a comparability determination. Specifically, the Commission will consider the scope and objectives of the relevant foreign jurisdiction's margin requirements;[15] whether the relevant foreign jurisdiction's margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements;[16] and the ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements.[17]

This process reflects an outcomes-based approach to assessing the comparability of a foreign jurisdiction's margin requirements. Instead of demanding strict uniformity with the Commission's margin requirements, the Commission evaluates the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority. Recognizing that jurisdictions may adopt different approaches to achieving the same outcome, the Commission will focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.

In keeping with the Commission's commitment to international coordination on margin requirements for uncleared derivatives, the Commission believes that the standards it has established are fully consistent with the BCBS/IOSCO Framework.[18] Accordingly, where relevant to the Commission's comparability analysis, the BCBS/IOSCO Framework is discussed to explain certain internationally agreed upon concepts. In addition, considerations of comity are particularly relevant to the substituted compliance determination under this type of international framework.[19]

The CFTC Cross-Border Margin Rule provided a detailed discussion regarding the facts and circumstances under which substituted compliance for the requirements under the CFTC Margin Rule would be available and such discussion is not repeated here. CSEs seeking to rely on substituted compliance based on the comparability determinations contained herein are responsible for determining whether substituted compliance is available under the CFTC Cross-Border Margin Rule with respect to the CSE's particular status and circumstances.

D. Conditions to Comparability Determinations

The CFTC Cross-Border Margin Rule provides that the Commission may impose terms and conditions it deems appropriate in issuing a comparability determination.[20] Any specific terms and conditions with respect to margin requirements are discussed in the Commission's determinations detailed below.

As a general condition to all determinations, however, the Commission requires notification of any material changes to information submitted to the Commission by the applicant in support of a comparability finding, including, but not limited to, changes in the relevant foreign jurisdiction's supervisory or regulatory regime.[21] The Commission also expects that the relevant foreign regulator will enter into, or will have entered into, an appropriate memorandum of understanding or similar arrangement with the Commission in connection with a comparability determination.[22]

Finally, the Commission considers an application to be a representation by the applicant that the laws and regulations submitted are finalized,[23] that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the swaps activities[24] of CSEs[25] in the relevant jurisdictions.[26]

[14] *See id.*

[15] *See* § 23.160(c)(3)(i).

[16] *See* § 23.160(c)(3)(ii). As discussed above, the Commission's CFTC Margin Rule is based on the BCBS/IOSCO Framework; therefore, the Commission expects that the relevant foreign margin requirements would conform to such Framework at a minimum in order to be deemed comparable to the Commission's corresponding margin requirements.

[17] *See* § 23.160(c)(3)(iii). *See also* § 23.160(c)(3)(iv) (indicating the Commission would also consider any other relevant facts and circumstances).

[18] The CFTC Margin Rule was modified substantially from its proposed form to further align the Commission's margin requirements with the BCBS/IOSCO Framework and, as a result, the potential for conflict with foreign margin requirements should be reduced. For example, the CFTC Margin Rule raised the material swaps exposure level from $3 billion to the BCBS/IOSCO standard of $8 billion, which reduces the number of entities that must collect and post initial margin. *See* CFTC Margin Rule, 81 FR at 644. In addition, the definition of uncleared swap was amended to not include swaps cleared by derivatives clearing organizations that are not registered with the Commission but pursuant to Commission orders are permitted to clear for U.S. persons. *See id.* at 638. The Commission notes, however, that the BCBS/IOSCO Framework leaves certain elements open to interpretation (*e.g.,* the definition of ''derivative'') and expressly invites regulators to build on certain principles as appropriate. *See, e.g.,* Element 4 (eligible collateral) (national regulators should ''develop their own list of eligible collateral assets based on the key principle, taking into account the conditions of their own markets''); Element 5 (initial margin) (the degree to which margin should be protected would be affected by ''the local bankruptcy regime, and would vary across jurisdictions''); Element 6 (transactions with affiliates) (''Transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction's legal and regulatory framework.'').

[19] It is noted that APRA has provided reciprocal recognition of the CFTC Margin Rule.

[20] *See* § 23.160(c)(5).

[21] *See* CFTC Cross-Border Margin Rule, 81 FR at 34839.

[22] Under Commission regulations 23.203 and 23.606, CSEs must maintain all records required by the CEA and the Commission's regulations in accordance with Commission regulation 1.31 and keep them open for inspection by representatives of the Commission, the U.S. Department of Justice, or any applicable U.S. Prudential Regulator. *See* §§ 23.203 and 23.606. A CSE that is eligible to avail itself of substituted compliance pursuant to the Commission's Comparability Determination for Australia: Certain Entity-Level Requirements must comply with the Commission's requirements to: (i) Make records required by § 23.201 open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable U.S. Prudential Regulator in accordance with § 23.203(b)(2); and (ii) produce information to Commission staff and the staff of an applicable U.S. Prudential Regulator in accordance with § 23.606(a)(2).

[23] The Commission notes that finalized rules of the foreign jurisdiction must be in full force and effect before a CSE may rely on this comparability determination for purposes of substituted compliance.

[24] ''Swaps activities'' is defined in Commission regulation 23.600(a)(7) to mean, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The Commission's regulations under 17 CFR part 23 are limited in scope to the swaps activities of CSEs.

[25] No CSE that is not legally required to comply with a law or regulation determined to be comparable may voluntarily comply with such law or regulation in lieu of compliance with the CEA and the relevant Commission regulation. Each CSE that seeks to rely on a comparability determination is responsible for determining whether it is subject to the laws and regulations found comparable.

[26] The Commission has provided APRA with opportunities to review and comment on the Commission's description of APRA's laws and regulations on which this comparability determination is based. The Commission relies on the accuracy and completeness of such review and any corrections received in making its comparability determinations. A comparability determination based on an inaccurate description of foreign laws and regulations may not be valid.

III. Margin Requirements for Swaps Activities in Australia

As represented to the Commission by the applicant, margin requirements for swap activities in Australia are governed by APRA's *Prudential Standard CPS 226: Margining and risk mitigation for non-centrally cleared derivatives* (including the Explanatory Statement and Regulation Impact Statement) (''CPS 226''), covering: (i) Authorized deposit-taking institutions (''ADIs,'' including foreign ADIs and authorized banking non-operating holding companies); (ii) general insurers (including foreign general insurers operating as foreign branches in Australia, authorized insurance non-operating holding companies and parent entities of Level 2 [27] insurance groups); (iii) life companies (including friendly societies, eligible foreign life insurance companies, and registered life non-operating holding companies); and (iv) registrable superannuation entities (collectively, ''APRA covered entities'').[28]

IV. Comparability Analysis

The following section describes the regulatory objective of the Commission's requirements with respect to margin for uncleared swaps imposed by the CEA and the CFTC Margin Rule and a description of such requirements. Immediately following a description of the requirement(s) of the CFTC Margin Rule for which a comparability determination was requested by the applicant, the Commission provides a description of the foreign jurisdiction's comparable laws, regulations, or rules. The Commission then provides a discussion of the comparability of, or differences between, the CFTC Margin Rule and the foreign jurisdiction's laws, regulations, or rules.

A. Objectives of Margin Requirements

1. Commission Statement of Regulatory Objectives

The regulatory objective of the CFTC Margin Rule is to ensure the safety and soundness of CSEs in order to offset the greater risk to CSEs and the financial system arising from the use of swaps that are not cleared. The primary function of margin is to protect a CSE from counterparty default, allowing it to absorb losses and continue to meet its obligations using collateral provided by the defaulting counterparty. While the requirement to post margin protects the counterparty in the event of the CSE's default, it also functions as a risk management tool, limiting the amount of leverage a CSE can utilize by requiring that it have adequate eligible collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense not only in protecting the CSE but in containing the amount of risk in the financial system as a whole, reducing the potential for contagion arising from uncleared swaps.[29]

2. APRA Statement of Regulatory Objectives

The regulatory objectives of CPS 226 are to improve prudential safety, reduce systemic risk, and promote central clearing.[30] Further, APRA's margin regime incorporates additional risk mitigation requirements in relation to non-centrally cleared derivatives that are intended to increase the transparency of bilateral positions between counterparties, promote legal certainty over the terms of non-centrally cleared derivative transactions, and facilitate the timely resolution of disputes.[31] To ensure that these objectives are achieved, the laws and regulations of Australia prescribe that financial institutions shall establish an appropriate framework for margin requirements, in line with the BCBS/IOSCO Framework.

B. Products Subject to Margin Requirements

The Commission's CFTC Margin Rule applies only to uncleared swaps. Swaps are defined in section 1a(47) of the CEA [32] and Commission regulations.[33] ''Uncleared swap'' is defined for purposes of the CFTC Margin Rule in § 23.151 as a swap that is not cleared by a registered derivatives clearing organization, or by a clearing organization that the Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Act.[34]

In Australia, APRA's margin rules apply to ''non-centrally cleared derivatives,'' which are defined as derivatives [35] that are not cleared by a central counterparty.[36] APRA's margin rules do not apply to physically-settled foreign exchange forwards and swaps.[37] While it is beyond the scope of this comparability determination to definitively map any differences between the definitions of ''swap'' and ''uncleared swap'' under the CEA and Commission regulations and APRA's definitions of ''derivative,'' and ''non-centrally cleared derivative,'' the Commission believes that such definitions largely cover the same products and instruments.

However, because the definitions are not identical, the Commission recognizes the possibility that a CSE may enter into a transaction that is an uncleared swap as defined in the CEA and Commission regulations, but that is not a non-centrally cleared derivative as defined under the laws of Australia. In such cases, the CFTC Margin Rule would apply to the transaction but APRA's margin rules would not apply and thus, substituted compliance would not be available. The CSE could not choose to comply with APRA's margin rules in place of the CFTC Margin Rule.

[27] APRA has represented that a Level 2 group is APRA's broadest regulatory consolidation for capital adequacy purposes for banking and general insurance entities, and includes all subsidiaries of the head of the group, including those incorporated outside Australia, except for non-consolidated subsidiaries.

[28] *See* CPS 226, Paragraphs 2 and 3. An APRA covered entity that is a parent of a Level 2 group must ensure that certain affiliates comply with the requirements of APRA's margin rules as if those affiliates were themselves APRA covered entities. *See* CPS 226, Paragraph 4.

[29] *See* CFTC Cross-Border Margin Rule, 81 FR at 34819.

[30] *See* CPS 226 Explanatory Statement, Page 4.

[31] *See* APRA Discussion Paper, Margining and risk mitigation for non-centrally cleared derivatives (''APRA Discussion Paper''), Page 8, available at *https://www.apra.gov.au/margining-and-risk-mitigation-non-centrally-cleared-derivatives.*

[32] 7 U.S.C. 1a(47).

[33] *See, e.g.,* § 1.3, Swap.

[34] Section 23.151.

[35] For the purposes of CPS 226, a ''derivative'' is defined as (i) a derivative within the meaning of Chapter 7 of the Corporations Act of 2001; or (ii) an arrangement that is a forward, swap, or option, or any combination of those things, in relation to one or more commodities. *See* CPS 226, Paragraph 9(g).

[36] *See* CPS 226, Paragraph 9(r). Non-centrally cleared derivatives do not include exchange traded derivatives, securities financing transactions, or indirectly cleared derivatives that are intermediated through a clearing member on behalf of a non-member client where the client is subject to the margin requirements of the central counterparty, or where the client provides margin consistent with the central counterparty's margin requirements. *Id.*

[37] *See* CPS 226, Paragraphs 12 and 18. Pursuant to a determination by the Secretary of the Treasury, foreign exchange swaps and foreign exchange forwards are exempt from the definition of the term ''swap'' under the CEA. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012). Accordingly, such transactions are not subject to the CFTC Margin Rule. *See* 81 FR at 638. Notwithstanding that foreign exchange swaps and foreign exchange forwards are exempt from the definition of swap, CSEs remain subject to the Commission's requirements for swap transaction reporting and business conduct standards with respect to such transactions.

Likewise, if a transaction is a non-centrally cleared derivative as defined under the laws of Australia but not an uncleared swap subject to the CFTC Margin Rule, a CSE could not choose to comply with the CFTC Margin Rule pursuant to this determination. CSEs are solely responsible for determining whether a particular transaction is both an uncleared swap and a non-centrally cleared derivative before relying on substituted compliance under the comparability determinations set forth below.

C. Entities Subject to Margin Requirements

The CFTC Margin Rule and CFTC Cross-Border Margin Rule apply only to CSEs, *i.e.,* SDs and MSPs registered with the Commission for which there is not a U.S. Prudential Regulator.[38] Thus, only such CSEs may rely on the determinations herein for substituted compliance, while SDs and MSPs for which there is a U.S. Prudential Regulator must look to the determinations of the U.S. Prudential Regulators. The Commission has consulted with the U.S. Prudential Regulators in making these determinations.

CSEs are not required to collect and/or post margin with every uncleared swap counterparty. The initial margin obligations of CSEs under the CFTC Margin Rule apply only to uncleared swaps with counterparties that meet the definition of ''covered counterparty'' in § 23.151.[39] Such definition provides that a ''covered counterparty'' is a counterparty to a swap with a CSE that is either a financial end user[40] that exceeds a certain threshold of swap activity (''material swaps exposure'')[41] or another SD or MSP.[42] On the other hand, the variation margin obligations of CSEs under the CFTC Margin Rule apply more broadly. Such obligations apply to CSEs transacting with SDs, MSPs, and all financial end users, not just those with material swaps exposure.[43] Thus, importantly for comparison with the non-centrally cleared derivative margin requirements of Australia, under the CFTC Margin Rule CSEs must exchange variation margin with any counterparty that falls within the definition of ''financial end user'' without regard to the size of such counterparty's involvement in the swap market or the risk it may present to the CSE.

All APRA covered entities are subject to the margin requirements in CPS 226. Similar to the CFTC Margin Rule's exclusion of non-CSE counterparties that do not meet the definition of ''financial end user,'' APRA's margin rules state that APRA covered entities are only required to exchange margin with certain types of financial institutions[44] (collectively, ''APRA covered counterparties''). Also similar to the CFTC Margin Rule's material swaps exposure threshold for application of initial margin requirements, APRA's margin rules require initial margin to be exchanged only when an APRA covered entity and its APRA covered counterparty each belong to a margining group[45] whose aggregate month-end average notional amount of non-centrally cleared derivatives for a pre-defined three-month reference period exceeds a ''qualifying level'' of AUD 12 billion, subject to a phase-in period (''APRA Initial Margin Threshold'').[46] The implementation timetable for APRA's initial margin requirements is as follows:[47]

Reference period	Qualifying level	Margining period
March, April and May 2016	AUD 4.5 trillion	1 March 2017 to 31 August 2017.
March, April and May 2017	AUD 3.375 trillion	1 September 2017 to 31 August 2018.
March, April and May 2018	AUD 2.25 trillion	1 September 2018 to 31 August 2019.
March, April and May 2019	AUD 1.125 trillion	1 September 2019 to 31 August 2020.
From March 2020, March, April and May of each subsequent calendar year.	AUD 12 billion	1 September of the year referred to in the first column of this row to 31 August of the next calendar year.

But, dissimilar to the CFTC Margin Rule's requirement that CSEs exchange variation margin with all swap entity and ''financial end user'' counterparties regardless of the level of activity in uncleared swaps, APRA's margin rules require variation margin to be exchanged only when an APRA covered entity and its APRA covered counterparty each belong to a margining group whose aggregate month-end average notional amount of non-

[38] *See* description of the U.S. Prudential Regulators in *supra* note 2.

[39] *See* § 23.152.

[40] *See* definition of ''Financial end user'' in § 23.150. In general, the definition covers entities involved in regulated financial activity, including banks, brokers, intermediaries, advisers, asset managers, collective investment vehicles, and insurers.

[41] *See* § 23.150, which defines the initial margin threshold for financial end-users as ''material swaps exposure.'' Material swaps exposure for a financial end-user means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. An entity shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time. For purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that qualifies for an exemption under section 3C(g)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations or that satisfies the criteria in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78–c3(g)(4)) and implementing regulations.

[42] *See* definition of ''swap entity'' in § 23.150.

[43] *See* § 23.153.

[44] A ''financial institution'' includes, but is not limited to any institution engaged substantively in one or more of the following activities: Banking; leasing; issuing credit cards; portfolio management; management of securitization schemes; equity and/or debt securities, futures and commodity trading and broking; custodial and safekeeping services; insurance and similar activities that are ancillary to the conduct of these activities. *See* CPS 226, Paragraph 9(i). Further, an APRA covered counterparty excludes: (i) Sovereigns, central banks, multilateral development banks, public sector entities and the Bank for International Settlements; (ii) a covered bond special purpose vehicle that enters into derivative transactions for the sole purpose of hedging; and (iii) a securitization special purpose vehicle in a traditional securitization that enters into derivative transactions for the sole purpose of hedging. *See* CPS 226, Paragraph 9(f).

[45] A ''margining group'' is comprised of one or more entities within the meaning of Australian Accounting Standard AASB 10 *Consolidated Financial Statements* (''AASB 10''). AASB 10 establishes principles for the presentation and preparation of consolidated financial statements when an entity controls one or more other entities, and defines a group as a parent and its subsidiaries, where a subsidiary is an entity that is controlled by another entity. *See* CPS 226, Paragraph 9(n); Australian Accounting Standard AASB 10 *Consolidated Financial Statements,* Appendix A. An APRA covered entity may elect to apply equivalent foreign accounting standards that apply to the consolidated financial statements of the APRA covered entity or APRA covered counterparty, as relevant. *See* CPS 226, Paragraph 9(n).

[46] *See* CPS 226, Paragraph 17.

[47] *See* CPS 226, Paragraph 18.

centrally cleared derivatives for a pre-defined three-month reference period exceeds a ''qualifying level'' of AUD 3 billion (''APRA Variation Margin Threshold'').[48] The implementation timetable for APRA's variation margin requirements is as follows:[49]

Reference period	Qualifying level	Margining period
March, April and May 2016	AUD 3 billion	1 March 2017 to 31 August 2017.
March, April and May 2017	AUD 3 billion	1 September 2017 to 31 August 2018.
March, April and May of each subsequent calendar year.	AUD 3 billion	1 September of the year referred to in the first column of this row to 31 August of the next calendar year.

Accordingly, (i) when either the APRA covered entity or its APRA covered counterparty belong to a margining group whose non-centrally cleared derivatives activities fall below the APRA Initial Margin Threshold, an APRA covered entity is not required to comply with the initial margin requirements of CPS 226; (ii) when either the APRA covered entity or its APRA covered counterparty belong to a margining group whose non-centrally cleared derivatives activities fall below the APRA Variation Margin Threshold, an APRA covered entity is not required to comply with the variation margin requirements of CPS 226; and (iii) when the APRA covered entity transacts with a non-APRA covered counterparty, the APRA covered entity is not required to comply with either the initial or variation margin requirements of CPS 226 (transactions described in (ii) and (iii) are hereinafter referred to as ''Supervised Transactions'').

Notwithstanding APRA's margin thresholds, entities that are subject to both the CFTC Margin Rule and CPS 226 would also be required to comply with APRA's risk management framework, which requires such entities to have systems in place for identifying, measuring, evaluating, monitoring, reporting, and controlling or mitigating material risks (''CPS 220'').[50] Such risks include: (i) Credit risk, (ii) market and investment risk; (iii) liquidity risk; (iv) insurance risk; (v) operational risk; (vi) risk arising from strategic objectives and business plans; and (vii) any other risk that, singly or in combination with different risks, may have a material impact on the institution.[51]

APRA represented that, given the highly concentrated nature of Australia's non-centrally cleared derivatives market, the exclusion of small market participants from APRA's margin requirements would have a minimal impact on the reduction of systemic risk.[52] APRA further stated that the APRA Variation Margin Threshold was intended to limit the competitive disadvantage to small firms faced with the considerable costs associated with compliance of the full extent of the margin requirements in CPS 226, and to avoid the creation of a disincentive for the use of non-centrally cleared derivatives for hedging purposes.[53]

Despite the definitional differences and differences in activity thresholds with respect to the scope of application of the CFTC Margin Rule and APRA's margin requirements, the Commission notes that in transactions between counterparties with the highest levels of activity in uncleared swaps (and thus presumably present the most risk), both the CFTC Margin Rule and APRA's margin requirements require both initial and variation margin. CSEs that exceed the APRA Initial Margin Threshold transacting with APRA covered counterparties that also exceed the APRA Initial Margin Threshold would be required to collect and post initial margin and variation margin in amounts and with frequencies that are comparable to the same requirements under the CFTC Margin Rule (as discussed elsewhere in this determination). Although the ''material swaps exposure'' threshold under the CFTC Margin Rule (denominated in USD) is currently lower than the APRA Initial Margin Threshold (denominated in AUD), the Commission recognizes that they are of approximately the same magnitude and further differences are largely attributable to fluctuating AUD/USD exchange rates. Given that the initial margin thresholds serve the same purpose and are of approximately the same magnitude, the Commission has concluded that the application of the APRA Initial Margin Threshold is comparable in purpose and effect to the CFTC ''material swaps exposure'' threshold. The Commission also notes that if a CSE/APRA covered entity enters into an uncleared swap with a CSE that is a U.S. person, then it will be required to exchange variation margin and post initial margin in accordance with the CFTC Margin Rule, because substituted compliance for variation margin and the collection of initial margin is not available.[54] This requirement significantly limits the extent to which differences between the APRA Initial Margin Threshold and the CFTC ''material swaps exposure'' threshold could negatively impact systemic risk in the United States.[55]

With respect to Supervised Transactions that would be subject to the CFTC Margin Rule but not subject to certain requirements of CPS 226, the Commission recognizes that APRA has determined that such transactions generally involve small counterparties that do not present risk that warrants the considerable costs associated with compliance with the full scope of APRA's margin rules. The Commission also recognizes that Supervised Transactions will remain subject to APRA's risk management requirements under CPS 220.

The Commission also notes that application of the CFTC Margin Rule to CSEs otherwise eligible for substituted compliance that are seeking to enter Supervised Transactions in Australia that are subject to APRA's risk management requirements under CPS 220 would place those CSEs at a competitive disadvantage relative to other firms subject only to the risk management requirements under CPS 220.

[48] *See* CPS 226, Paragraph 11.

[49] *See* CPS 226, Paragraph 12.

[50] *See* APRA Prudential Standard CPS 220—Risk Management (''CPS 220''), available at *https://www.apra.gov.au/sites/default/files/Prudential-Standard-CPS-220-Risk-Management-%28July-2017%29.pdf.*

[51] *See* CPS 220, Paragraph 26.

[52] *See* APRA Response to Submissions, Margining and risk mitigation for non-centrally cleared derivatives (''APRA Response to Submissions''), Page 22, available at *https://www.apra.gov.au/margining-and-risk-mitigation-non-centrally-cleared-derivatives.* Further, APRA estimated that although the APRA Variation Margin Threshold would exclude approximately half of all market participants from the requirement to exchange variation margin, over 80% of all transactions in the market would nonetheless be subject to variation margin requirements. *See* APRA Regulation Impact Statement, Page 13.

[53] *See* APRA Discussion Paper, Page 19.

[54] *See* Cross-Border Margin Rule, 81 FR at 34829.

[55] This requirement also mitigates anti-evasion concerns.

Accordingly, the Commission finds that the scope of entities subject to the non-centrally cleared derivatives requirements under the laws of Australia is comparable in purpose and outcome to the scope of entities subject to the CFTC Margin Rule for purposes of § 23.160. A CSE that is an APRA covered entity and eligible for substituted compliance under § 23.160 may therefore classify its counterparties in accordance with CPS 226 with respect to determining whether initial or variation margin must be exchanged. For Supervised Transactions, where certain margin requirements would apply under the CFTC Margin Rule, but not under CPS 226 (*e.g.,* the requirement to exchange variation margin), a CSE that is an APRA covered entity and eligible for substituted compliance under § 23.160 may comply with the relevant aspects of the CFTC Margin Rule by complying with the risk management requirements of CPS 220.

D. Treatment of Inter-Affiliate Derivative Transactions

The BCBS/IOSCO Framework recognizes that the treatment of inter-affiliate derivative transactions will vary between jurisdictions. Thus, the BCBS/IOSCO Framework does not set standards with respect to the treatment of inter-affiliate transactions. Rather, it recommends that regulators in each jurisdiction review their own legal frameworks and market conditions and put in place margin requirements applicable to inter-affiliate transactions as appropriate.[56]

1. Commission Requirements for Inter-Affiliate Transactions

The Commission determined through its CFTC Margin Rule to provide rules for swaps between ''margin affiliates.'' The definition of ''margin affiliates'' provides that a company is a margin affiliate of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in (i) or (ii) above would have occurred if such principles or standards had applied.[57]

With respect to swaps between margin affiliates, the CFTC Margin Rule, with one exception explained below, provides that a CSE is not required to collect initial margin [58] from a margin affiliate provided that the CSE meets the following conditions: (i) The swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the margin affiliate.[59]

In an exception to the foregoing general rule, the CFTC Margin Rule does require CSEs to collect initial margin from non-U.S. affiliates that are financial end users that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end users.[60] This provision is an anti-evasion measure that is designed to prevent the potential use of affiliates to avoid collecting initial margin from third parties. For example, suppose an unregistered non-U.S. affiliate of a CSE enters into a swap with a financial end user and does not collect initial margin equivalent to that which would have been required if such affiliate were subject to the CFTC Margin Rule. Suppose further that the affiliate then enters into a swap with the CSE. Effectively, the risk of the swap with the third party would have been passed to the CSE without any initial margin. The rule would require this affiliate to post initial margin with the CSE. The rule would further require that the CSE collect initial margin even if the affiliate routed the trade through one or more other affiliates.[61]

The Commission stated in the CFTC Margin Rule that its inter-affiliate initial margin requirement is consistent with its goal of harmonizing its margin rules as much as possible with the BCBS/IOSCO Framework.[62] Such Framework, for example, states that although the exchange of initial and variation margin by affiliated parties vary, such exchange ''is not customary'' and that initial margin in particular ''would likely create additional liquidity demands.'' [63] Accordingly, the Framework states that ''[s]uch transactions may not necessarily be suited to harmonization.'' [64] With an understanding that many authorities, such as those in Europe and Japan, were not expected to require initial margin for inter-affiliate swaps, the Commission recognized that requiring the posting and collection of initial margin for inter-affiliate swaps generally would be likely to put CSEs at a competitive disadvantage to firms in those other jurisdictions where such margin was not required.[65]

Unlike the general rule for initial margin, however, the CFTC Margin Rule does require CSEs to exchange variation margin with margin affiliates that are SDs, MSPs, or financial end users (as is also required under the U.S. Prudential Regulators' rules).[66] The Commission believes that marking open positions to market each day and requiring the posting or collection of variation margin reduces the risks of inter-affiliate swaps.

2. Requirements for Inter-Affiliate Derivatives Under the Laws of Australia

Pursuant to APRA's margin rules, an APRA covered entity is not required to exchange initial margin with an APRA covered counterparty that is also a member of the APRA covered entity's margining group.[67] APRA's definition of ''margining group'' is similar to the Commission's definition of ''margin affiliates'' for purposes of the CFTC Margin Rule.[68] Further, an APRA covered entity that is a foreign ADI, a foreign general insurer operating as a foreign branch in Australia, or an eligible foreign life insurance company is not required to exchange variation margin with an APRA covered counterparty that is a member of its margining group.[69] An APRA covered entity is also not required to exchange variation margin with an APRA covered counterparty that is a member of its Level 2 group.[70]

In addition, APRA has the discretionary authority to impose initial and/or variation margin requirements between an APRA covered entity and

[56] *See* BCBS/IOSCO Framework, Element 6: Treatment of transactions with affiliates.

[57] *See* § 23.151.

[58] ''Initial margin'' is margin exchanged to protect against a potential future exposure and is defined in § 23.151 to mean ''the collateral, as calculated in accordance with § 23.154 that is collected or posted in connection with one or more uncleared swaps.''

[59] *See* § 23.159(a).

[60] *See* § 23.159(c).

[61] *See id.*

[62] *See* CFTC Margin Rule, 81 FR at 674.

[63] *See* BCBS/IOSCO Framework, Element 6: Treatment of transactions with affiliates.

[64] *Id.*

[65] *See* CFTC Margin Rule, 81 FR at 674.

[66] *See* § 23.159(b), U.S. Prudential Regulators' Margin Rule, 80 FR at 74909.

[67] *See* CPS 226, Paragraph 57.

[68] *See* definition of ''margin affiliate'' in § 23.150.

[69] *See* CPS 226, Paragraph 58.

[70] *See* CPS 226, Paragraph 59. A Level 2 group is APRA's broadest regulatory consolidation for capital adequacy purposes for banking and general insurance entities, and includes all subsidiaries of the head of the group, including those incorporated outside Australia, except for non-consolidated subsidiaries. APRA has represented that, with respect to banking groups, the following types of affiliates would be *excluded* from Level 2 consolidation: Insurance; funds management; certain securitization special purpose vehicles; and non-financial subsidiaries.

any of its affiliates where APRA deems appropriate to do so, in light of regulatory arbitrage and contagion risks.[71] APRA stated that it would consider ''the impact on prudential safety, financial stability, procyclicality, competition, and other factors'' in exercising this discretionary authority.[72]

APRA has observed that entities often perform risk management decisions on a consolidated group basis, and frequently use inter-affiliate derivatives for hedging purposes.[73] Further, APRA stated that the application of consolidated capital requirements to Level 2 groups allows APRA to maintain oversight and confidence that the Level 2 capital required adequately reflects the risk undertaken by entities within the same Level 2 group.[74] Accordingly, APRA limited its inter-affiliate variation margin requirements to those affiliates that are not part of the same Level 2 capital consolidation group. APRA stated that its application of inter-affiliate variation margin requirements is intended to minimize liquidity and operational burdens while also reducing the risk of contagion to an APRA-regulated institution.[75]

3. Commission Determination

Having compared the outcomes of APRA's margin requirements applicable to inter-affiliate non-centrally cleared derivatives to the outcomes of the Commission's corresponding margin requirements applicable to inter-affiliate uncleared swaps, and considered those outcomes in the broader context of APRA's prudential oversight of risk management and capital requirements, the Commission finds that the treatment of inter-affiliate transactions under the CFTC Margin Rule and the treatment of those transactions under APRA's margin requirements are comparable in outcome.

The CFTC and APRA both generally exclude inter-affiliate transactions from their respective initial margin requirements.[76] However, the scope of application of APRA's variation margin requirements for inter-affiliate transactions is narrower than that under the CFTC Margin Rule. Specifically, the CFTC Margin Rule requires the exchange of variation margin between all margin affiliates, while APRA only requires the exchange of variation margin between affiliates that are not part of the same Level 2 capital consolidation group.

An uncleared swap with an affiliate presents credit risk to a CSE. The Commission has determined that this credit risk must be managed by marking open positions to market each day and requiring the posting or collection of variation margin. If the affiliate were to default, the margin provided by the affiliate would allow a CSE to continue to meet its obligations. APRA, on the other hand, has determined that this credit risk can be adequately managed for Level 2 affiliates with specific capital requirements and the more general risk management standards that require APRA covered entities to establish and implement policies and procedures for risk mitigation standards for non-centrally cleared derivatives transactions with all of their counterparties.[77] In 2013, the Commission found the risk management requirements for APRA covered entities comparable to the Commission's risk management requirements for SDs and MSPs under subpart J of part 23 of the Commission's regulations.[78] In addition, uncollateralized credit risk from inter-affiliate swaps would be subject to capital requirements under the Commission's proposed capital rules.[79]

The Commission notes that if a CSE/APRA covered entity enters into an uncleared swap with a margin affiliate that is itself a CSE and a U.S. person, then it will be required to exchange variation margin in accordance with the CFTC Margin Rule, because the U.S. CSE is required to do so and substituted compliance for the inter-affiliate variation margin requirement is not available to U.S. CSEs.[80] In addition, the Commission is aware of the historic volume and aggregate size of inter-affiliate uncleared swaps of CSEs that may currently be eligible for substituted compliance pursuant to this determination. Given the inability to transfer risk to U.S. margin affiliates that are CSEs without variation margin, the historic level of relevant inter-affiliate activity, and the capital and risk management requirements of both APRA and the Commission, the Commission has concluded that the outcome resulting from compliance with APRA's capital and risk management requirements is comparable in outcome to compliance with the CFTC Margin Rule with respect to uncleared swaps with Level 2 affiliates. Accordingly, the Commission finds that the requirements under the laws of Australia with respect to inter-affiliate margin for non-centrally cleared derivatives are comparable in outcome to the requirements of the CFTC Margin Rule for purposes of § 23.160. The Commission intends to monitor the volume and aggregate size of inter-affiliate swaps of CSEs that may be eligible for substituted compliance pursuant to this determination and, to the extent it deems prudent, may consult with APRA regarding the capital and risk management treatment of the attendant risk of such swaps.

E. Methodologies for Calculating the Amounts of Initial and Variation Margin

As an overview, the methodologies for calculating initial and variation margin as agreed under the BCBS/IOSCO Framework state that the margin collected from a counterparty should (i) be consistent across entities covered by the requirements and reflect the potential future exposure (initial margin) and current exposure (variation margin) associated with the particular portfolio of non-centrally cleared derivatives, and (ii) ensure that all

[71] *See* CPS 226, Paragraph 61; *see also* APRA Response to Submissions, Page 14.

[72] *See* APRA Response to Submissions, Page 14.

[73] *See* APRA Discussion Paper, Page 15.

[74] *See id.*

[75] *See id.*

[76] The CFTC Margin Rule only requires CSEs to collect initial margin from non-U.S. affiliates that are not subject to comparable initial margin collection requirements on their own outward facing swaps with third parties.

[77] *See* CPS 226, Paragraph 71. In this regard, APRA's position is similar to a 2016 statement of then-CFTC Commissioner Christopher Giancarlo regarding inter-affiliate swaps, ''[I]nter-affiliate swaps provide an important risk management role within corporate groups. They enable use of a single conduit on behalf of multiple affiliates to net affiliates' trades, which reduces the overall risk of the corporate group and the number of outward-facing swaps into which the affiliates might otherwise enter. This, in turn, reduces operational, market, counterparty credit and settlement risk. Rather than increasing risk, inter-affiliate swaps allow entities within a corporate group to transfer risk to the group entity best positioned to manage it.'' *See* CFTC Margin Rule, 81 FR at 707.

[78] *See* Notice of Comparability Determination for Certain Requirements under Australian Regulation, 78 FR 78864, 78870 (Dec. 27, 2013). In that determination, the Commission noted that CPS 220, which was in draft form at the time, would impose additional compliance requirements on ADIs.

[79] *See* Capital Requirements for Swap Dealers and Major Swap Participants, 81 FR 91252, 91258 (Dec. 16, 2016). Further, many CSEs are part of bank holding companies that are subject to consolidated oversight by the U.S. Prudential Regulators.

[80] *See* Cross-Border Margin Rule, 81 FR at 34829. The Commission notes that, subject to certain conditions, a CSE is generally not required to collect initial margin from a margin affiliate. *See* § 23.159(a)(1). However, a CSE would be required to collect initial margin from a margin affiliate that is a financial end user where the margin affiliate is located in a jurisdiction that the Commission has not found to be eligible for substituted compliance with regard to the CFTC Margin Rule, and the margin affiliate does not collect initial margin on its swaps with unaffiliated third parties for which initial margin would be required if the swap were subject to the CFTC Margin Rule. *See* § 23.159(c)(2)(ii). With this Determination, the Commission has found Australia to be eligible for substituted compliance with regard to all aspects of the CFTC Margin Rule, and thus, a CSE would generally not be required to collect initial margin from a margin affiliate in Australia that is a financial end user. *See* § 23.159(c)(2)(iii).

counterparty risk exposures are covered fully with a high degree of confidence.

With respect to the calculation of initial margin, as a minimum the BCBS/IOSCO Framework generally provides that:

• Initial margin requirements will not apply to counterparties that have less than EUR 8 billion of gross notional in outstanding derivatives.

• Initial margin may be subject to a EUR 50 million threshold applicable to a consolidated group of affiliated counterparties.

• All margin transfers between parties may be subject to a de-minimis minimum transfer amount not to exceed EUR 500,000.

• The potential future exposure of a non-centrally cleared derivative should reflect an extreme but plausible estimate of an increase in the value of the instrument that is consistent with a one-tailed 99% confidence interval over a 10-day horizon, based on historical data that incorporates a period of significant financial stress.

• The required amount of initial margin may be calculated by reference to either (i) a quantitative portfolio margin model or (ii) a standardized margin schedule.

• When initial margin is calculated by reference to an initial margin model, the period of financial stress used for calibration should be identified and applied separately for each broad asset class for which portfolio margining is allowed.

• Models may be either internally developed or sourced from the counterparties or third-party vendors but in all such cases, models must be approved by the appropriate supervisory authority.

• Quantitative initial margin models must be subject to an internal governance process that continuously assesses the value of the model's risk assessments, tests the model's assessments against realized data and experience, and validates the applicability of the model to the derivatives for which it is being used.

• An initial margin model may consider all of the derivatives that are approved for model use that are subject to a single legally enforceable netting agreement.

• Initial margin models may account for diversification, hedging, and risk offsets within well-defined asset classes such as currency/rates, equity, credit, or commodities, but not across such asset classes and provided these instruments are covered by the same legally enforceable netting agreement and are approved by the relevant supervisory authority.

• The total initial margin requirement for a portfolio consisting of multiple asset classes would be the sum of the initial margin amounts calculated for each asset class separately.

• Derivatives for which a firm faces zero counterparty risk require no initial margin to be collected and may be excluded from the initial margin calculation.

• Where a standardized initial margin schedule is appropriate, it should be computed by multiplying the gross notional size of a derivative by the standardized margin rates provided under the BCBS/IOSCO Framework [81] and adjusting such amount by the ratio of the net current replacement cost to gross current replacement cost (NGR) pertaining to all derivatives in a legally enforceable netting set. The BCBS/IOSCO Framework provides the following standardized margin rates:

Asset class	Initial margin requirement (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign exchange	6
Interest rate: 0–2 year duration	1
Interest rate: 2–5 year duration	2
Interest rate: 5+ year duration	4
Other	15

• For a regulated entity that is already using a schedule-based margin to satisfy requirements under its required capital regime, the appropriate supervisory authority may permit the use of the same schedule for initial margin purposes, provided that it is at least as conservative.

• The choice between model- and schedule-based initial margin calculations should be made consistently over time for all transactions within the same well defined asset class.

• Initial margin should be collected at the outset of a transaction, and collected thereafter on a routine and consistent basis upon changes in measured potential future exposure, such as when trades are added to or subtracted from the portfolio.

• In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange the required amount of initial margin in a timely fashion.

With respect to the calculation of variation margin, as a minimum the BCBS/IOSCO Framework generally provides that:

• The full amount necessary to fully collateralize the mark-to-market exposure of the non-centrally cleared derivatives must be exchanged.

• Variation margin should be calculated and exchanged for derivatives subject to a single, legally enforceable netting agreement with sufficient frequency (*e.g.,* daily).

• In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the

[81] The BCBS/IOSCO Framework provides standardized margin rates, as set out in the table accompanying the text.

dispute and exchange the required amount of variation margin in a timely fashion.

1. Commission Requirement for Calculation of Initial Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of initial margin, the Commission's CFTC Margin Rule generally provides that:

• Initial margin is intended to address potential future exposure, *i.e.,* in the event of a counterparty default, initial margin protects the non-defaulting party from the loss that may result from a swap or portfolio of swaps, during the period of time needed to close out the swap(s).[82]

• Potential future exposure is to be an estimate of the one-tailed 99% confidence interval for an increase in the value of the uncleared swap or netting portfolio of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of 10 business days or the maturity of the swap or netting portfolio.[83]

• The required amount of initial margin may be calculated by reference to either (i) a risk-based margin model or (ii) a table-based method.[84]

• All data used to calibrate the initial margin model shall incorporate a period of significant financial stress for each broad asset class that is appropriate to the uncleared swaps to which the initial margin model is applied.[85]

• CSEs shall obtain the written approval of the Commission or a registered futures association to use a model to calculate the initial margin required.[86]

• An initial margin model may calculate initial margin for a netting portfolio of uncleared swaps covered by the same eligible master netting agreement.[87]

• An initial margin model may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the CSE validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange or interest rate.[88]

• Empirical correlations under an eligible master netting agreement may be recognized by the model within each broad risk category, but not across broad risk categories.[89]

• If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of uncleared swaps within a broad risk category, the CSE shall calculate an amount of initial margin separately for each subset of uncleared swaps for which such relationships are explicitly recognized by the model and the sum of the initial margin amounts calculated for each subset of uncleared swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of uncleared swaps within the broad risk category.[90]

• Where a risk-based model is not used, initial margin must be computed by multiplying the gross notional size of a derivative by the standardized margin rates provided under § 23.154(c)(1) [91] and adjusting such amount by the ratio of the net current replacement cost to gross current replacement cost (NGR) pertaining to all derivatives under the same eligible master netting agreement.[92]

• A CSE shall not be deemed to have violated its obligation to collect or post initial margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[93]

2. Commission Requirements for Calculation of Variation Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of variation margin, the Commission's CFTC Margin Rule generally provides that:

• Each business day, a CSE must calculate variation margin amounts for itself and for each counterparty that is an SD, MSP, or financial end user. Such variation margin amounts must be equal to the cumulative mark-to-market change in value to the CSE of each uncleared swap, adjusted for any variation margin previously collected or posted with respect to that uncleared swap.[94]

• Variation margin must be calculated using methods, procedures, rules, and inputs that to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.[95]

• CSEs may comply with variation margin requirements on an aggregate basis with respect to uncleared swaps that are governed by the same eligible master netting agreement.[96]

• A CSE shall not be deemed to have violated its obligation to collect or post variation margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[97]

3. APRA Requirements for Calculation of Initial Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of initial margin, APRA's margin rule generally provides that:

• APRA covered entities must post and collect initial margin with an APRA covered counterparty to cover the potential future exposure that could arise from future changes in the market value of a non-centrally cleared derivative over the close-out period in the event of a counterparty default.[98]

• The required amount of initial margin posted and collected must be calculated by either a model approach approved by APRA or the standardized schedule set out in APRA's margin rules.[99]

• APRA may, upon the request of an APRA covered entity, approve the entity to calculate initial margin using a schedule already in use for regulatory capital purposes prior to the application of APRA's margin rules, provided that such a schedule is at least as conservative as outlined in APRA's margin rules.[100]

• When using the standardized schedule for initial margin, APRA covered entities must calculate the sum of the net standardized initial margin

[82] *See* CFTC Margin Rule, 81 FR at 683.

[83] *See* § 23.154(b)(2)(i).

[84] *See* § 23.154(a)(1)(i) and (ii).

[85] *See* § 23.154(b)(2)(ii).

[86] *See* § 23.154(b)(1)(i).

[87] *See* § 23.154(b)(2)(v).

[88] *See id.*

[89] *See id.*

[90] *See* § 23.154(b)(2)(vi).

[91] The standardized margin rates provided in § 23.154(c)(1) are, in all material respects, the same as those provided under the BCBS/IOSCO Framework. *See supra* note 81.

[92] *See* § 23.154(c).

[93] *See* § 23.152(d)(2)(i).

[94] *See* § 23.155(a).

[95] *See id.*

[96] *See* § 23.153(d)(1).

[97] *See* § 23.153(e)(2)(i).

[98] *See* CPS 226, Paragraphs 17 and 9(k). The standardized margin rates provided in CPS 226 are, in all material respects, the same as those provided under the BCBS/IOSCO Framework. *See supra* note 81.

[99] *See* CPS 226, Paragraph 30.

[100] *See* CPS 226, Attachment A, Paragraph 2.

amount separately for each netting agreement.[101]

• APRA covered entities are not required to collect initial margin for non-centrally cleared derivatives for which there is no counterparty risk; accordingly, such derivatives may be excluded from the initial margin calculation under both a model approach and the standardized schedule.[102]

• The calculation of initial margin for cross-currency swaps differs depending on whether a model approach or the standardized schedule is adopted:[103]

▪ If a model approach is adopted, then the model does not need to incorporate the risk associated with the fixed physically-settled FX transactions associated with the exchange of principal. All other risks of the cross-currency swap must be considered in the calculation.

▪ If the standardized schedule is adopted, then the initial margin only needs to be calculated with reference to the relevant row in the interest rates section of APRA's standardized schedule.

• The initial margin calculated by the model approach must be sufficiently conservative even during periods of low market volatility. Calculation of the initial margin amount must be consistent with at least a one-tailed 99% confidence interval over a 10-day time horizon, based on historical data that includes a period of significant financial stress and does not exceed an historical period of five years. The historical data must be equally weighted for calibration purposes.[104]

• The period of financial stress used for calibration must be identified and applied separately for each asset class.[105]

• Transactions that are not subject to the same legally enforceable netting agreement must not be considered in the same initial margin model calculation.[106]

• A model may allow for diversification, hedging and risk offsets within an asset class provided these transactions are covered by the same legally enforceable netting agreement. Any such allowance requires approval by APRA as part of an initial margin model approval.[107]

• Initial margin calculations by a model for derivatives in distinct asset classes must be performed without regard to derivatives in other asset classes. That is, initial margin amounts calculated for each asset class must not account for diversification benefits across asset class and must be summed to calculate the initial margin amount for a netting agreement.[108]

4. APRA Requirements for Calculation of Variation Margin

In keeping with the BCBS/IOSCO Framework described above, with respect to the calculation of variation margin, APRA's margin rule generally provides that:

• APRA covered entities must exchange variation margin with APRA covered counterparties to reflect the current mark-to-market exposure resulting from changes in the market value of a non-centrally cleared derivative.[109]

• Transactions that are not subject to the same legally enforceable netting agreement must not be considered in the same variation margin calculation.[110]

5. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the amounts of initial and variation margin calculated under the methodologies required under APRA's margin rules would be similar to those calculated under the methodologies required under the CFTC Margin Rule. Specifically, under the CFTC Margin Rule and APRA's margin rules:

• The definitions of initial and variation margin are similar, including the description of potential future exposure agreed under the BCBS/IOSCO Framework;

• Margin models and/or a standardized margin schedule may be used to calculate initial margin;

• Criteria for historical data to be used in initial margin models are similar;

• Initial margin models must be approved by a regulator;

• Eligibility for netting is similar;

• Correlations may be recognized within broad risk categories, but not across such risk categories;

• The required method of calculating initial margin using standardized margin rates is essentially identical; and

• The prescribed standardized margin rates are essentially identical.

Accordingly, the Commission finds that the methodologies for calculating the amounts of initial and variation margin for non-centrally cleared derivatives under the laws of Australia are comparable in outcome to those of the CFTC Margin Rule for purposes of § 23.160.

F. Process and Standards for Approving Margin Models

Pursuant to the BCBS/IOSCO Framework, initial margin models may be either internally developed or sourced from counterparties or third-party vendors but in all such cases, models must be approved by the appropriate supervisory authority.[111]

1. Commission Requirement for Margin Model Approval

In keeping with the BCBS/IOSCO Framework, the CFTC Margin Rule generally requires:

• CSEs shall obtain the written approval of the Commission or a registered futures association to use a model to calculate the initial margin required.[112]

• The Commission or a registered futures association will approve models that demonstrate satisfaction of all of the requirements for an initial margin model set forth above in Section IV(E)(1), in addition to the requirements for annual review;[113] control, oversight, and validation mechanisms;[114] documentation;[115] and escalation procedures.[116]

• CSEs must notify the Commission and the registered futures association in writing 60 days prior to, extending the use of an initial margin model to an additional product type; making any change to the model that would result in a material change in the CSE's assessment of initial margin requirements; or making any material change to modeling assumptions.

• The Commission or the registered futures association may rescind its approval, or may impose additional conditions or requirements if the Commission or the registered futures association determines, in its discretion, that a model no longer complies with the requirements for an initial margin

[101] *See* CPS 226, Attachment A, Paragraph 1. For each netting agreement, the net standardized initial margin amount = 0.4 × gross standardized initial margin amount + 0.6 × net-to-gross ratio of the net current credit exposure of all transactions included in a netting agreement to the gross current credit exposure of the same transactions. *See* CPS 226, Attachment A, Paragraph 3(a).

[102] *See* CPS 226, Paragraph 31.

[103] *See* CPS 226, Paragraph 32.

[104] *See* CPS 226, Paragraph 34.

[105] *See* CPS 226, Paragraph 35.

[106] *See* CPS 226, Paragraph 36.

[107] *See* CPS 226, Paragraph 37.

[108] *See* CPS 226, Paragraph 38.

[109] *See* CPS 226, Paragraphs 9(ab), 11. The exchange of variation margin is executed pursuant to the implementation table referenced in section IV(C) *supra*.

[110] *See* CPS 226, Paragraph 16.

[111] *See* BCBS/IOSCO Framework Requirement 3.3.

[112] *See* § 23.154(b)(1)(i).

[113] *See* § 23.154(b)(4), discussed further *infra*.

[114] *See* § 23.154(b)(5), discussed further *infra*.

[115] *See* § 23.154(b)(6), discussed further *infra*.

[116] *See* § 23.154(b)(7), discussed further *infra*.

model summarized in section IV(E)(1) *supra.*

2. APRA Requirements for Approval of Margin Models

In keeping with the BCBS/IOSCO Framework, APRA's margin rules generally require:

• An APRA covered entity may apply to APRA for approval to use a model for the calculation of initial margin for some or all of its portfolio.[117] APRA has further represented that it must approve all margin models prior to their implementation.

• Once an APRA covered entity has obtained approval to use a model for the calculation of initial margin for an asset class, it must continue to employ that model for that asset class on an ongoing basis unless, or except to the extent that, the model approval is varied, revoked, or suspended by APRA.[118]

• APRA may, at any time, vary, revoke, or suspend a model approval for the calculation of initial margin, or impose additional conditions on a model approval.[119]

• Prior notification to APRA is required for any material changes to an initial margin model or risk measurement system. APRA's prior written approval is required for any material changes to an initial margin model which are not consistent with global industry standards for initial margin models.[120]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that the requirements for submission of margin models to APRA are comparable to the regulatory approval requirements of the CFTC Margin Rule. Specifically, APRA covered entities must submit their models to APRA for approval prior to their implementation and notify APRA of material changes to the model. APRA also retains the right to vary, suspend or revoke its approval at any time. Accordingly, the Commission finds that such requirements under the laws of Australia are comparable in outcome to those of the CFTC Margin Rule for purposes of § 23.160.

G. Timing and Manner for Collection or Payment of Initial and Variation Margin

1. Commission Requirement for Timing and Manner for Collection or Payment of Initial and Variation Margin

With respect to the timing and manner for collection or posting of initial margin, the CFTC Margin Rule generally provides that:

• Where a CSE is required to collect initial margin, it must be collected on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to hold initial margin in an amount equal to or greater than the required initial margin amount as re-calculated each business day until such uncleared swap is terminated or expires.

• Where a CSE is required to post initial margin, it must be posted on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to post initial margin in an amount equal to or greater than the required initial margin amount as re-calculated each business day until such uncleared swap is terminated or expires.

• Required initial margin amounts must be posted and collected by CSEs on a gross basis (*i.e.,* amounts to be posted may not be set-off against amounts to be collected from the same counterparty).

With respect to the timing and manner for collection or posting of variation margin, the CFTC Margin Rule generally provides that:

• Where a CSE is required to collect variation margin, it must be collected on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to collect the required variation margin amount, if any, each business day as re-calculated each business day until such uncleared swap is terminated or expires.[121]

• Where a CSE is required to post variation margin, it must be posted on or before the business day after execution of an uncleared swap, and thereafter the CSE must continue to post the required variation margin amount, if any, each business day as re-calculated each business day until such uncleared swap is terminated or expires.[122]

With respect to both initial and variation margin, a CSE shall not be deemed to have violated its obligation to collect or post margin if, *inter alia,* it makes timely initiation of dispute resolution mechanisms, including pursuant to § 23.504(b)(4).[123]

2. APRA Requirements for Timing and Manner for Collection of Initial and Variation Margin

With respect to the timing and manner for collection or posting of initial margin, APRA's margin rules generally provide that:

• Initial margin must be calculated and called both at the outset of a transaction and on a regular and consistent basis upon changes in the measured potential future exposure. Settlement of initial margin amounts must be conducted promptly.[124]

• Initial margin must be posted and collected on a gross basis.[125]

With respect to the timing and manner for collection or posting of variation margin, APRA's margin rules generally provide that variation margin must be calculated and called on a daily basis, and settlement of variation margin amounts must be conducted promptly.[126] In the discussion paper that accompanied CPS 226, APRA stated that settlement of variation margin should occur on a T+1 basis; however, such a settlement timeframe may not be feasible in all circumstances due to, for example, time zone and cross-border considerations, and therefore has adopted a principles-based approach for the prompt settlement of variation margin.[127]

3. Commission Determination

Having compared APRA's margin requirements applicable to the timing and manner of collection and payment of initial and variation margin to the Commission's corresponding margin requirements, the Commission finds that APRA's margin requirements are comparable in outcome for purposes of § 23.160.

Under the CFTC Margin Rule, where initial margin is required, a CSE must calculate the amount of initial margin each business day. Although APRA's margin rules only require that initial margin be calculated on a ''regular and consistent basis,'' APRA represented

[117] *See* CPS 226, Paragraph 33.

[118] *See* CPS 226, Paragraph 41.

[119] *See* CPS 226, Paragraph 42.

[120] *See* CPS 226, Paragraph 44.

[121] *See* § 23.153(a).

[122] *See* § 23.153(b).

[123] *See* § 23.153(e)(2)(i).

[124] *See* CPS 226, Paragraph 21. APRA represented that its initial margin requirements were intended to provide flexibility for less significant financial counterparties that may find the daily calculation and exchange of initial margin to be operationally difficult. Given that changes to a portfolio would trigger a requirement for the re-calculation and call of initial margin, APRA represented that, in practice, the inter-bank/dealer market would nonetheless calculate and exchange initial margin on a daily basis.

[125] *See* CPS 226, Paragraph 20.

[126] *See* CPS 226, Paragraph 14.

[127] *See* APRA Discussion Paper, Page 19.

that larger Australian banks and dealers whose portfolios change on a daily basis will nonetheless calculate initial margin on a daily basis, given that APRA's rules require that initial margin must be re-calculated upon changes in potential future exposure. Both jurisdictions require counterparties to calculate and call variation margin on a daily basis.

With respect to the timing of the collection and posting of margin, the CFTC Margin Rule requires CSEs to collect or post any required margin amount (whether initial or variation) within one business day of calculation. APRA's margin rules specify only that margin be collected or posted ''promptly,'' which presumably could be longer than one business day. APRA stated that, absent extenuating circumstances, the settlement of variation margin should occur within one business day of calculation. With respect to the settlement of initial margin, APRA stated that its flexible approach is appropriate for ''less significant financial counterparties'' and would not significantly impact systemic risk.[128] Specifically, the daily calculation and exchange of initial margin would have a limited impact on risk for inactive traders, as a counterparty's potential future exposure would be unlikely to change significantly and variation margin would nonetheless be exchanged daily. APRA has represented that the large internationally active banks that are operating in Australia would generally calculate and exchange margin on a daily basis, consistent with the CFTC Margin Rule, due to daily changes to their portfolios.

Given APRA's statements regarding the practical implementation of its margin rules, the Commission finds that the requirements of APRA's rules with respect to the timing and manner for collection or payment of initial and variation margin are comparable in outcome for purposes of § 23.160.

H. Margin Threshold Levels or Amounts

The BCBS/IOSCO Framework provides that initial margin could be subject to a threshold not to exceed EUR 50 million. The threshold is applied at the level of the consolidated group to which the threshold is being extended and is based on all non-centrally cleared derivatives between the two consolidated groups.

Similarly, to alleviate operational burdens associated with the transfer of small amounts of margin, the BCBS/IOSCO Framework provides that all margin transfers between parties may be subject to a de-minimis minimum transfer amount not to exceed EUR 500,000.

1. Commission Requirement for Margin Threshold Levels or Amounts

In keeping with the BCBS/IOSCO Framework, with respect to margin threshold levels or amounts the CFTC Margin Rule generally provides that:

- CSEs may agree with their counterparties that initial margin may be subject to a threshold of no more than $50 million applicable to a consolidated group of affiliated counterparties.[129]
- CSEs are not required to collect or to post initial or variation margin with a counterparty until the combined amount of initial margin and variation margin to be collected or posted is greater than $500,000 (*i.e.,* a minimum transfer amount).[130]

2. APRA Requirements for Margin Threshold Levels or Amounts

Also in keeping with the BCBS/IOSCO Framework, with respect to margin threshold levels or amounts, APRA's margin requirements generally provide that:

- The threshold applicable to the initial margin for each margining group must not be greater than AUD 75 million. The threshold is applied bilaterally at the aggregate level of the margining group and is based on all non-centrally cleared derivative transactions between the two margining groups.[131]
- The combined variation margin and initial margin required to be posted or collected pursuant to APRA's margin rules must be subject to a de-minimis minimum transfer amount that must not exceed AUD 750,000 (*i.e.,* a minimum transfer amount).[132]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission has determined that APRA's requirements for margin threshold levels or amounts, in the case of APRA covered entities, are comparable in outcome to those required by the CFTC Margin Rule for purposes of § 23.160.

The Commission notes that at current exchange rates, AUD 75 million is approximately $53 million, while AUD 750,000 is approximately $530,000. Although these amounts are greater than those permitted by the CFTC Margin Rule, the Commission recognizes that exchange rates will fluctuate over time and thus the Commission finds that such requirements under the laws of Australia are comparable in outcome to those of the CFTC Margin Rule for purposes of § 23.160.

I. Risk Management Controls for the Calculation of Initial and Variation Margin

1. Commission Requirement for Risk Management Controls for the Calculation of Initial and Variation Margin

With respect to risk management controls for the calculation of initial margin, the CFTC Margin Rule generally provides that:

- CSEs are required to have a risk management unit pursuant to § 23.600(c)(4). Such risk management unit must include a risk control unit tasked with validation of a CSE's initial margin model prior to implementation and on an ongoing basis, including an evaluation of the conceptual soundness of the initial margin model, an ongoing monitoring process that includes verification of processes and benchmarking by comparing the CSE's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques, and an outcomes analysis process that includes back testing the model.[133]
- In accordance with § 23.600(e)(2), CSEs must have an internal audit function independent of the business trading unit and the risk management unit that at least annually assesses the effectiveness of the controls supporting the initial margin model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the CSE's initial margin requirements under this part.[134]
- At least annually, such internal audit function shall report its findings to the CSE's governing body, senior management, and chief compliance officer.[135]

[128] As discussed above, the CFTC Margin Rule applies only to SDs and MSPs for which there is no U.S. Prudential Regulator. SDs and MSPs are registered by virtue of their substantial swaps activity. By comparison, APRA's margin rules apply to a broader range of entities, including depository institutions, insurance companies, and superannuation firms. Thus, APRA's margin rules have incorporated a greater flexibility with respect to the timing of margin collection and posting in order to address the range in the size and sophistication of the entities that are subject to its margin requirements.

[129] *See* § 23.154(a)(3) and definition of ''initial margin threshold'' in § 23.151.

[130] *See* § 23.152(b)(3).

[131] *See* CPS 226, Paragraph 22.

[132] *See* CPS 226, Paragraph 28.

[133] *See* § 23.154(b)(5).

[134] *See* § 23.154(b)(5)(iv).

[135] *See* § 23.154(b)(5)(iv).

With respect to risk management controls for the calculation of variation margin, the CFTC Margin Rule generally provides that:

• CSEs must maintain documentation setting forth the variation margin methodology with sufficient specificity to allow a counterparty, the Commission, a registered futures association, and any applicable U.S. Prudential Regulator to calculate a reasonable approximation of the margin requirement independently.

• CSEs must evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.

• CSEs, upon request of the Commission or a registered futures association, must provide further data or analysis concerning the variation margin methodology or a data source, including: The manner in which the methodology meets the requirements of the CFTC Margin Rule; a description of the mechanics of the methodology; the conceptual basis of the methodology; the empirical support for the methodology; and the empirical support for the assessment of the data sources.

2. APRA Requirements for Risk Management Controls for the Calculation of Initial and Variation Margin

With respect to risk management controls for the calculation of initial margin, APRA's margin requirements generally provide that:

• Where APRA covered entities use a quantitative calculation model to calculate initial margin, the models must be subject to an independent internal governance process that: (i) Continuously monitors and assesses the value of the model's risk assessments; (ii) tests the model against realized data and experience; (iii) validates the applicability of the model to the derivatives for which it is used; (iv) regularly reviews the model in line with developments in global industry standards for initial margin models; and (v) accounts for the complexity of the products covered.[136]

• APRA covered entities must ensure that an independent review of the initial margin model and risk measurements system is carried out initially and then regularly as part of the internal audit process. This review must be conducted by functionally independent, appropriately trained, and competent personnel, and must take place at least once every three years or when a material change is made to the model or the risk measurement system.[137]

With respect to risk management controls for the calculation of variation margin, APRA's margin requirements generally provide that:

• An APRA covered entity must agree with its APRA covered counterparties and clearly document the process for determining the value of each non-centrally cleared derivative transaction at any time from the execution of the transaction to the termination, maturity, or expiration thereof.[138]

• Documentation must include an alternative process or approach by which counterparties will determine the value of the non-centrally cleared derivative transaction in the event of the unavailability or other failure of any inputs required to value the transaction.[139]

• An APRA covered entity must perform periodic reviews of the agreed upon valuation process to take into account changes in market conditions.[140]

3. Commission Determination

Based on the foregoing, the Commission has determined that APRA's requirements applicable to APRA covered entities pertaining to risk management controls for the calculation of initial and variation margin are comparable to the corresponding requirements under the CFTC Margin Rule. Specifically, the Commission finds that under both APRA's requirements and the CFTC Margin Rule, a CSE is required to establish a unit independent of the trading desk that is tasked with comprehensively managing the entity's use of an initial margin model, including establishing controls and testing procedures. Further, APRA's margin requirements and the CFTC Margin Rule both require ongoing reviews of firms' valuation methodologies. Although APRA's margin rules only require an internal review of the margin model and risk measurement system to be carried out once every three years, as compared to the CFTC Margin Rule's requirement for an annual review, APRA's margin rules also require a review to be conducted when a material change is made to the model or risk management system. In addition, margin model risk is further mitigated by APRA's requirement that models must be subject to an internal governance process that, among other things, continuously monitors and tests the models against realized experience and developments in industry standards. Accordingly, the Commission finds that, for purposes of § 23.160, APRA's requirements pertaining to risk management controls are comparable in outcome to the controls required by the CFTC Margin Rule.

J. Eligible Collateral for Initial and Variation Margin

As explained in the BCBS/IOSCO Framework, to ensure that counterparties can liquidate assets held as initial and variation margin in a reasonable amount of time to generate proceeds that could sufficiently protect collecting entities from losses on non-centrally cleared derivatives in the event of a counterparty default, assets collected as collateral for initial and variation margin purposes should be highly liquid and should, after accounting for an appropriate haircut, be able to hold their value in a time of financial stress. Such a set of eligible collateral should take into account that assets which are liquid in normal market conditions may rapidly become illiquid in times of financial stress. In addition to having good liquidity, eligible collateral should not be exposed to excessive credit, market and FX risk (including through differences between the currency of the collateral asset and the currency of settlement). To the extent that the value of the collateral is exposed to these risks, appropriately risk-sensitive haircuts should be applied. More importantly, the value of the collateral should not exhibit a significant correlation with the creditworthiness of the counterparty or the value of the underlying non-centrally cleared derivatives portfolio in such a way that would undermine the effectiveness of the protection offered by the margin collected. Accordingly, securities issued by the counterparty or its related entities should not be accepted as collateral. Accepted collateral should also be reasonably diversified.

1. Commission Requirement for Eligible Collateral for Initial and Variation Margin

With respect to eligible collateral that may be collected or posted to satisfy an initial margin obligation, the CFTC Margin Rule generally provides that CSEs may collect or post:[141]

• Cash denominated in a major currency, being United States Dollar (USD); Canadian Dollar (CAD); Euro (EUR); United Kingdom Pound (GBP); Japanese Yen (JPY); Swiss Franc (CHF); New Zealand Dollar (NZD); Australian Dollar (AUD); Swedish Kronor (SEK); Danish Kroner (DKK); Norwegian Krone

[136] *See* CPS 226, Paragraph 39.

[137] *See* CPS 226, Paragraph 40.

[138] *See* CPS 226, Paragraph 86.

[139] *See* CPS 226, Paragraph 88.

[140] *See* CPS 226, Paragraph 89.

[141] *See* § 23.156(a)(1).

(NOK); any other currency designated by the Commission; or any currency of settlement for a particular uncleared swap.

- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury.
- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the U.S. government.
- A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to SDs subject to regulation by a U.S. Prudential Regulator.
- A publicly-traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities.
- A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank as defined in § 23.151.
- Other publicly-traded debt that has been deemed acceptable as initial margin by a U.S. Prudential Regulator as defined in § 23.151.
- A publicly-traded common equity security that is included in the Standard & Poor's Composite 1500 Index (or any other similar index of liquid and readily marketable equity securities as determined by the Commission), or an index that a CSE's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction.
- Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if the fund's investments are limited to securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20% risk weight under the capital rules applicable to SDs subject to regulation by a U.S. Prudential Regulator, and immediately-available cash funds denominated in the same currency; and assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee.
- Gold.
- A CSE may not collect or post as initial margin any asset that is a security issued by: The CSE or a margin affiliate of the CSE (in the case of posting) or the counterparty or any margin affiliate of the counterparty (in the case of collection); a bank holding company, a savings and loan holding company, a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or a margin affiliate of any of the foregoing institutions; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323).[142]
- The value of any eligible collateral collected or posted to satisfy initial margin requirements must be reduced by the following haircuts: An 8% discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of an eligible master netting agreement; and the discounts set forth in the following table:[143]

STANDARDIZED HAIRCUT SCHEDULE

Cash in same currency as swap obligation	0.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(v)): Residual maturity less than one-year	0.5
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(v)): Residual maturity between one and five years	2.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in 17 CFR 23.156(a)(1)(v)): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(v)): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(v)): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in 17 CFR 23.156(a)(1)(v)): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0

With respect to eligible collateral that may be collected or posted to satisfy a variation margin obligation, the CFTC Margin Rule generally provides that CSEs may collect or post:[144]

[142] *See* § 23.156(a)(2).

[143] *See* § 23.156(a)(3).

[144] *See* § 23.156(b)(1).

• With respect to uncleared swaps with an SD or MSP, only immediately available cash funds that are denominated in: U.S. dollars, another major currency (as defined in § 23.151), or the currency of settlement of the uncleared swap.

• With respect to any other uncleared swaps for which a CSE is required to collect or post variation margin, any asset that is eligible to be posted or collected as initial margin, as described above.

• The value of any eligible collateral collected or posted to satisfy variation margin requirements must be reduced by the same haircuts applicable to initial margin described above.[145]

Finally, CSEs must monitor the value and eligibility of collateral collected and posted: [146]

• CSEs must monitor the market value and eligibility of all collateral collected and posted, and, to the extent that the market value of such collateral has declined, the CSE must promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of §§ 23.150 through 23.161.

• To the extent that collateral is no longer eligible, CSEs must promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of §§ 23.150 through 23.161.

2. APRA Requirements for Eligible Collateral for Initial and Variation Margin

With respect to eligible collateral that may be collected or posted to satisfy an initial or variation margin obligation, APRA's margin requirements generally provide that APRA covered entities may collect or post: [147]

• Cash.[148]

• Debt securities issued by Commonwealth, State and Territory governments in Australia, central, state, and regional governments in other countries, the Reserve Bank of Australia, central banks in other countries, and the international banking agencies and multilateral development banks (each with an External Credit Assessment Institution (''ECAI'') rating of 3 or better).[149]

• Debt securities issued by ADIs, overseas banks, Australian and international local governments and corporates (each with an ECAI rating of 3 or better).[150]

• Unrated debt securities that are issued by an ADI or overseas bank as senior debt and are listed on a recognized exchange. All externally rated issues of the same seniority by the same issuer must have a long-term or short-term ECAI rating of 3 or better, and the entity holding the unrated security must have no information suggesting that the unrated security justifies an ECAI rating of less than 3.[151]

• Covered bonds with an ECAI rating of 3 or better.[152]

• Senior securitization exposures with an ECAI rating of 1.[153]

• Equities included in a major stock index.[154]

• Gold bullion.[155]

• Resecuritization exposures (irrespective of credit ratings) are not eligible collateral.[156]

• Securities issued by a counterparty to the transaction (or by any person or entity related or associated with the counterparty) is considered to have a material positive correlation with the credit quality of the counterparty and thus are not eligible collateral.[157]

• An APRA covered entity must have appropriate controls in place to ensure that the collateral collected does not exhibit significant wrong-way risk or significant concentration risk. The controls must consider concentrations in terms of an individual issuer, issuer type, and asset type.[158]

Risk-sensitive haircuts appropriately reflecting the credit, market, and FX risk must be applied to the collateral.[159] The haircuts must be calculated using either a model approach approved by APRA or the following standardized schedule: [160]

Cash	0%
Debt securities under paragraph 45(b):	
residual maturity ≤1 year	0.5%
residual maturity >1 year, ≤5 years	2%
residual maturity >5 years	4%
Debt securities under paragraphs 45(c), 45(d), 45(e),45(f):	
residual maturity ≤1 year	1%
residual maturity >1 year, ≤5 years	4%
residual maturity >5 years	8%
Equities included in a major stock index	15%
Gold	15%

With respect to initial margin, an additional FX haircut of eight per cent of market value applies to all cash and non-cash collateral in which the currency of the collateral asset differs from the termination currency.[161] Similarly, for purposes of variation margin, an additional FX haircut of 8% of market value applies to all non-cash collateral in which the currency of the collateral asset differs from the agreed upon currency of an individual derivative contract, the relevant master netting agreement, or the relevant credit support annex.[162]

3. Commission Determination

Based on the foregoing and the representations of the applicant, the Commission observes that APRA's

[145] *See* § 23.156(b)(2).

[146] *See* § 23.156(c).

[147] *See* CPS 226, Paragraph 45.

[148] *See* CPS 226, Paragraph 45(a).

[149] *See* CPS 226, Paragraph 45(b).

[150] *See* CPS 226, Paragraph 45(c).

[151] *See* CPS 226, Paragraph 45(d).

[152] *See* CPS 226, Paragraph 45(e).

[153] *See* CPS 226, Paragraph 45(f).

[154] *See* CPS 226, Paragraph 45(g).

[155] *See* CPS 226, Paragraph 45(h).

[156] *See* CPS 226, Paragraph 46.

[157] *See* CPS 226, Paragraph 47.

[158] *See* CPS 226, Paragraph 48.

[159] *See* CPS 226, Paragraph 50.

[160] *See* CPS 226, Paragraph 50 and Attachment B. The risk-sensitive haircut for an APRA covered entity may also be calculated using a schedule already in use for regulatory capital purposes prior to the application of CPS 226, provided that such a schedule is at least as conservative as the CPS 226 schedule. The use of such an alternative schedule for the risk-sensitive haircut must be approved by APRA. *Id.*

[161] *See* CPS 226, Attachment B, Paragraph 4.

[162] *See* CPS 226, Attachment B, Paragraph 3.

requirements pertaining to assets eligible for posting or collecting by APRA covered entities as collateral for non-centrally cleared derivatives are comparable to the requirements of the CFTC Margin Rule.

The Commission notes that there are some areas in which APRA's requirements for eligible collateral are less strict than those in the CFTC Margin Rule. For example, APRA allows for a broader range of forms of eligible collateral, including debt securities issued by banks and senior securitizations. This difference is mitigated, however, by APRA's requirement that such debt securities either: (i) have certain minimum credit ratings; or (ii) if unrated, are senior debt listed on a recognized exchange and issued by entities whose comparable securities have certain minimum credit ratings. Further, APRA's margin rules apply a 15% haircut for all equities included on a major stock index, whereas the CFTC Margin Rule permits a 15% haircut for equities included in the S&P 500 or related index, and a 25% haircut for equities included in the S&P 1500 or related index. In addition, unlike the CFTC Margin Rule, APRA's margin rules do not delineate specific currencies which may be used as collateral.

With respect to variation margin, the CFTC Margin Rule states that CSEs are only permitted to exchange immediately available cash funds that are denominated in U.S. dollars, another major currency (as defined in § 23.151), or the currency of settlement of the uncleared swap when transacting with other swap entities. CSEs may post and collect any form of eligible collateral as variation margin when transacting with financial end users. By comparison, APRA's requirements would permit any form of eligible collateral (as described above) for transactions with all counterparties.

While not identical, the Commission finds that the forms of eligible collateral for initial and variation margin under the laws of Australia provide comparable protections to the forms of eligible collateral mandated by the CFTC Margin Rule. Specifically, although APRA's margin regime allows for a broader range of eligible collateral with corresponding haircuts, such collateral must satisfy credit rating restrictions that seek to ensure that it is liquid and able to hold its value in a time of financial stress. APRA covered entities must also continuously monitor the concentration risk of collateral. The Commission recognizes that the list of eligible collateral under APRA's margin regime was compiled by APRA in accordance with the standard set forth in the BCBS/IOSCO Framework requiring that the assets held as collateral are highly liquid and, after accounting for appropriate haircuts, able to hold their value in a time of financial stress.[163] Thus, the Commission finds APRA's margin regime with respect to the forms of eligible collateral for initial and variation margin for uncleared swaps is comparable in outcome to the CFTC Margin Rule for purposes of § 23.160.

K. Requirements for Custodial Arrangements, Segregation, and Rehypothecation

As explained in the BCBS/IOSCO Framework, the exchange of initial margin on a net basis may be insufficient to protect two market participants with large gross derivatives exposures to each other in the case of one firm's failure. Thus, the gross initial margin between such firms should be exchanged.[164]

Further, initial margin collected should be held in such a way as to ensure that (i) the margin collected is immediately available to the collecting party in the event of the counterparty's default, and (ii) the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the event that the collecting party enters bankruptcy.[165] The BCBS–IOSCO Framework acknowledges that ''there are many different ways to protect provided margin,'' and that in some cases, ''access to assets held by third-party custodians has been limited or practically difficult.'' [166]

1. Commission Requirement for Custodial Arrangements, Segregation, and Rehypothecation

In keeping with the principles set forth in the BCBS/IOSCO Framework, with respect to custodial arrangements, segregation, and rehypothecation, the CFTC Margin Rule generally requires that:

- All assets posted by or collected by CSEs as initial margin must be held by one or more custodians that are not the CSE, the counterparty, or margin affiliates of the CSE or the counterparty.[167]
- CSEs must enter into an agreement with each custodian holding initial margin collateral that:
  - Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian;
  - May permit the custodian to hold cash collateral in a general deposit account with the custodian if the funds in the account are used to purchase an asset that qualifies as eligible collateral (other than equities, investment vehicle securities, or gold), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and
  - Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or a similar proceeding.[168]
- A posting party may substitute any form of eligible collateral for posted collateral held as initial margin.[169]
- A posting party may direct reinvestment of posted collateral held as initial margin in any form of eligible collateral.[170]
- Collateral that is collected or posted as variation margin is not required to be held by a third-party custodian and is not subject to restrictions on rehypothecation, repledging, or reuse.[171]

2. APRA Requirements for Custodial Arrangements, Segregation, and Rehypothecation

With respect to custodial arrangements, segregation, and rehypothecation, APRA's margin rules generally require that:

- Initial margin must be held so as to ensure that: (i) The margin collected is promptly available to the collecting party in the event of the posting party's default; [172] and (ii) the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the event that the collecting party enters insolvency or bankruptcy.[173]

[163] *See* APRA Discussion Paper, Page 24.

[164] *See* BCBS/IOSCO Framework, Key principle 5.

[165] *See id.*

[166] *See* BCBS/IOSCO Framework, Commentary 5(i).

[167] *See* § 23.157(a) and (b).

[168] *See* § 23.157(c)(1) and (2).

[169] *See* § 23.157(c)(3).

[170] *See id.*

[171] *See* CFTC Margin Rule, 81 FR at 672.

[172] APRA considers the requirement that initial margin be promptly available to the collecting party in the event of the posting party's default consistent in policy intent with a requirement that initial margin be immediately available; *i.e.,* that initial margin must be available as soon as legally and operationally possible.

[173] *See* CPS 226, Paragraph 25. APRA further represented that although it implemented a principles-based approach, in practice it believes

• Initial margin must not be re-hypothecated, re-pledged or re-used, but cash initial margin may be held in a demand deposit account with a third-party custodian in the name of the posting counterparty. The third-party custodian must not be affiliated with either counterparty. APRA has represented that cash held in a custody account may be reinvested in other forms of eligible collateral. Contractual arrangements providing for the posting and collection of initial margin must provide for initial margin to be held in a manner that satisfies this requirement.[174]

• Initial margin collected must be segregated from the collector's proprietary assets. The initial margin collector must also segregate initial margin provided in respect of one or more counterparties from the assets of other parties if requested by the relevant counterparty or counterparties.[175]

• Eligible collateral that was originally posted or collected may be substituted provided that: (i) both parties agree to the substitution; (ii) the substitution is made on the terms applicable to their agreement; and (iii) the substituted eligible collateral meets all of the requirements of APRA's margin rules and the value of the substituted eligible collateral, after the application of risk-sensitive haircuts, is sufficient to meet the margin requirement.[176]

• Collateral exchanged for variation margin is not subject to custodial safekeeping requirements.

3. Commission Determination

The Commission notes that APRA's margin requirements with respect to custodial arrangements are less stringent than those of the CFTC Margin Rule in one respect. Under the CFTC Margin Rule, all assets posted by or collected by CSEs as initial margin must be held by one or more custodians that are not the CSE, the counterparty, or margin affiliates of the CSE or the counterparty.[177] APRA's margin rules permit, but do not require, cash initial margin to be held with a third-party custodian. If a third-party custodian is used, it may not be affiliated with either counterparty. Importantly, however, APRA's margin rules do not prohibit an APRA covered entity itself (or an affiliated entity for other than cash initial margin) from acting as custodian to hold initial margin collected from counterparties, so long as the margin is segregated from the collector's proprietary assets. Further, where a third-party custodian is not used, APRA's margin rules require collateral to be segregated from other counterparties' collateral only at the request of the posting counterparty.

As discussed above, the BCBS–IOSCO Framework contemplates multiple methodologies for protecting initial margin. APRA has stated that its margin safekeeping requirements were intended to allow flexible approaches that would mitigate compliance costs without compromising the protections available to counterparties.[178] If a third-party custodian is not used, APRA further represented that mere segregation of assets, in the absence of a trust arrangement, would not be sufficient to meet the requirements of CPS 226. APRA stated that Australian insolvency law protects the posting party's right to recover initial margin upon insolvency of the collecting party so long as it is held by the collecting party on trust for the posting party.[179] Accordingly, the Commission finds that APRA's margin requirements with respect to custodial arrangements are comparable in outcome to the CFTC Margin Rule for purposes of § 23.160.

L. Requirements for Margin Documentation

1. Commission Requirement for Margin Documentation

With respect to requirements for documentation of margin arrangements, the CFTC Margin Rule generally provides that:

• CSEs must execute documentation with each counterparty that provides the CSE with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by the CFTC Margin Rule.[180]

• The margin documentation must specify the methods, procedures, rules, inputs, and data sources to be used for determining the value of uncleared swaps for purposes of calculating variation margin; describe the methods, procedures, rules, inputs, and data sources to be used to calculate initial margin for uncleared swaps entered into between the CSE and the counterparty; and specify the procedures by which any disputes concerning the valuation of uncleared swaps, or the valuation of assets collected or posted as initial margin or variation margin may be resolved.[181]

2. APRA Requirements for Margin Documentation

With respect to requirements for documentation of margin arrangements, APRA's margin rules generally provide that:

• An APRA covered entity must establish and implement policies and procedures to execute written trading relationship documentation with an APRA covered counterparty prior to or contemporaneously with executing a non-centrally cleared derivative transaction.[182]

• The trading relationship documentation must: (i) Promote legal certainty for non-centrally cleared derivative transactions; (ii) include all material rights and obligations of the counterparties concerning the non-centrally cleared derivative trading relationship, including margin arrangements in accordance with applicable law, that have been agreed between them; and (iii) be executed in writing or through equivalent non-rewritable, non-erasable electronic means.[183]

• An APRA covered entity must agree with its counterparties and clearly document the process for determining the value of each non-centrally cleared derivative transaction for the purpose of exchanging margin.[184]

• All agreements on valuation process must be documented in the trading relationship documentation or trade confirmation.[185]

• An APRA covered entity must have rigorous and robust dispute resolution procedures in place with its counterparties prior to or contemporaneously with executing a non-centrally cleared derivative transaction.[186]

• An APRA covered entity must have policies and procedures to maintain trading relationship documentation for a reasonable period of time after the maturity of any outstanding transactions with an APRA covered counterparty.[187]

that most of the major Australian banks intend to use third-party custodians to meet with requirements of CPS 226.

[174] *See* CPS 226, Paragraph 26.

[175] *See* CPS 226, Paragraph 27.

[176] *See* CPS 226, Paragraph 49.

[177] *See* § 23.157(a) and (b).

[178] *See* APRA Discussion Paper, Page 22. APRA further represented that many large banks will nonetheless use third-party custodians.

[179] APRA stated that in the event of a bankruptcy, trust assets are not considered property of the collecting party, and would be dealt with under the terms of the trust arrangement. *See Stansfield DIY Wealth Pty Ltd (in liq)* [2014] NSWSC 1484.

[180] *See* § 23.158(a).

[181] *See* § 23.158(b).

[182] *See* CPS 226, Paragraph 74.

[183] *See* CPS 226, Paragraph 75.

[184] *See* CPS 226, Paragraph 86.

[185] *See* CPS 226, Paragraph 87.

[186] *See* CPS 226, Paragraph 90.

[187] *See* CPS 226, Paragraph 76.

3. Commission Determination

Based on the foregoing, the Commission has determined that APRA's margin requirements applicable to margin documentation are substantially the same as the margin documentation requirements under the CFTC Margin Rule. Specifically, the Commission finds that under both APRA's requirements and the CFTC Margin Rule, a CSE/APRA covered entity is required to enter into documentation with each counterparty that sets forth the rights and obligations of the counterparties, including margin arrangements in accordance with applicable law, as well as the methodologies used for determining valuations. Accordingly, the Commission finds that APRA's requirements pertaining to margin documentation are comparable in outcome to those required by the CFTC Margin Rule for purposes of § 23.160.

M. Cross-Border Application of the Margin Regime

1. Cross-Border Application of the CFTC Margin Rule

The general cross-border application of the CFTC Margin Rule, as set forth in the CFTC Cross-Border Margin Rule, is discussed in detail in section II *supra.* However, § 23.160(d) and (e) of the CFTC Cross-Border Margin Rule also provide certain alternative requirements for uncleared swaps subject to the laws of a jurisdiction that does not reliably recognize close-out netting under a master netting agreement governing a swap trading relationship, or that has inherent limitations on the ability of a CSE to post initial margin in compliance with the custodial arrangement requirements [188] of the CFTC Margin Rule.[189]

Section 23.160(d) generally provides that where a jurisdiction does not reliably recognize close-out netting, the CSE must treat the uncleared swaps covered by a master netting agreement on a gross basis with respect to collecting initial and variation margin, but may treat such swaps on a net basis with respect to posting initial and variation margin.[190]

Section 23.160(e) generally provides that where certain CSEs are required to transact with certain counterparties in uncleared swaps through an establishment in a jurisdiction where, due to inherent limitations in legal or operational infrastructure, it is impracticable to require posted initial margin to be held by an independent custodian pursuant to § 23.157, the CSE is required to collect initial margin in cash (as described in § 23.156(a)(1)(i)) and post and collect variation margin in cash, but is not required to post initial margin. In addition, the CSE is not required to hold the initial margin collected with an unaffiliated custodian.[191] Finally, the CSE may only enter into such affected transactions up to 5% of its total uncleared swap notional outstanding for each broad category of swaps described in § 23.154(b)(2)(v).

2. Cross-Border Application of APRA's Margin Regime

With respect to cross-border transactions, APRA's margin requirements state that APRA may approve substituted compliance in relation to the margin requirements of a foreign jurisdiction where those requirements are comparable in outcome with the BCBS/IOSCO framework and APRA's margin rules.[192] Where APRA grants substituted compliance, an APRA covered entity will be deemed in compliance with APRA's margin rules for transactions in which it complies with the relevant foreign margin requirements in their entirety.[193] APRA may limit the scope or impose conditions on its substituted compliance determinations.[194] An APRA covered entity may only avail itself of substituted compliance with respect to a foreign jurisdiction when a transaction is subject to the margin requirements of that jurisdiction.[195]

Where an APRA covered entity is a foreign ADI, a foreign general insurer operating as a foreign branch in Australia, or an eligible foreign life insurance company and is directly subject to margin requirements that are substantially similar to the BCBS/IOSCO Framework by its home jurisdiction, it may comply with its home jurisdiction's requirements in their entirety in lieu of complying with APRA's margin rules, subject to certain conditions.[196] Specifically, the APRA covered entity must complete an internal assessment that positively demonstrates: (i) How it is directly subject to the requirements of the foreign jurisdiction; (ii) how the requirements of the foreign jurisdiction are substantially similar to the BCBS/IOSCO Framework; and (iii) how it complies with those requirements.[197]

Similarly, where a member of an APRA covered entity's Level 2 group that is incorporated outside of Australia is directly subject to margin requirements of a foreign jurisdiction that are substantially similar to the

[188] *See* § 23.157 and section IV(K) *supra.*

[189] *See* § 23.160(d) and (e). With respect to non-netting jurisdictions, the CFTC margin rule generally provides that if a CSE cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in § 23.152(c) meets the definition of ''eligible master netting agreement'' set forth in § 23.151, the CSE must treat the uncleared swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of §§ 23.152(a) and 23.153(a) to collect margin, but the CSE may net those uncleared swaps in accordance with §§ 23.152(c) and 23.153(d) for the purposes of calculating and complying with the requirements of this part to post margin. A CSE that relies on this provision must have policies and procedures ensuring that it is in compliance with the requirements of this paragraph, and maintain books and records properly documenting that all of the requirements of the provision are satisfied.

With respect to jurisdictions where compliance with custodial arrangements is unavailable, §§ 23.152(b), 23.157(b), and 23.160(d) do not apply to an uncleared swap entered into by a Foreign Consolidated Subsidiary or a foreign branch of a U.S. CSE if (i) inherent limitations in the legal or operational infrastructure in the applicable foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral recognized pursuant to § 23.156 in compliance with the custodial arrangement requirements of § 23.157; (ii) the CSE is subject to foreign regulatory restrictions that require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the uncleared swap in compliance with the custodial arrangements of § 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination under § 23.160(c) with respect to § 23.157; (iii) the counterparty to the uncleared swap is a non-U.S. person that is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person; (iv) the CSE collects initial margin for the uncleared swap in accordance with § 23.152(a) in the form of cash pursuant to § 23.156(a)(1)(i), and posts and collects variation margin in accordance with § 23.153(a) in the form of cash pursuant to § 23.156(a)(1)(i); (v) for each broad risk category, as set out in § 23.154(b)(2)(v), the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on § 23.160(e), may not exceed 5% of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (vi) the CSE has policies and procedures ensuring that it is in compliance with the requirements of § 23.160(e); and (vii) the CSE maintains books and records properly documenting that all of the requirements of § 23.160(e) are satisfied.

[190] *See id.*

[191] *See* §§ 23.160(e) and 23.157(b).

[192] *See* CPS 226, Paragraph 62.

[193] *See* CPS 226, Paragraph 63.

[194] *Id.*

[195] *See* CPS 226, Paragraph 64. An APRA covered entity may only substitute compliance in APRA's margin rules with those of a foreign jurisdiction where: (i) the APRA covered entity is transacting with an APRA covered counterparty that is subject to the margin requirements of a the relevant foreign jurisdiction; and/or (ii) the APRA covered entity is directly subject to the margin requirements of the relevant foreign jurisdiction. *Id.*

[196] *See* CPS 226, Paragraph 65.

[197] *See* CPS 226, Paragraph 65. The APRA covered entity's internal assessment, and any additional information, must be made available to APRA upon request. *Id.*

BCBS/IOSCO Framework, the APRA covered entity may apply for approval by APRA to comply, with respect to that member, with the foreign jurisdiction's requirements in lieu of complying with the relevant requirements of APRA's margin rules.[198]

Further, an APRA covered entity is not required to exchange variation margin or post or collect initial margin if there is any doubt as to the enforceability of: (i) The netting agreement upon insolvency or bankruptcy of the counterparty;[199] or (ii) the collateral agreement upon default of the counterparty.[200] APRA covered entities must monitor such exposures and set appropriate internal limits and controls to manage its exposure to such counterparties.[201] APRA has represented that it will review such thresholds, limits and controls though its supervisory processes and monitor both entity and industry levels of exposures to these jurisdictions.

Finally, where a counterparty to a transaction is incorporated, and operating, in a legal jurisdiction that does not permit it or its counterparty to satisfy the safekeeping requirements of Paragraph 25 of APRA's margin rules,[202] an APRA covered entity is not required to post or collect initial margin.[203] APRA represented that although there is no limit to such exposures, it intends to monitor the use of this exemption as part of its supervisory program.

3. Commission Determination

Although there are some differences in the cross-border application of APRA's margin rules as compared to the CFTC Cross-Border Margin Rule, the Commission finds that the cross-border application of APRA's margin regime is comparable in outcome to that of the CFTC Margin Rule as supplemented by the CFTC Cross-Border Margin Rule for purposes of § 23.160.

APRA implemented a final amendment to CPS 226 on September 1, 2017, which permits substituted compliance with respect to the margin requirements of fourteen foreign bodies, including the CFTC and the U.S. Prudential Regulators.[204] Accordingly, where a counterparty to a transaction is subject to the uncleared margin requirements of APRA and the CFTC, it may comply with the CFTC Margin Rule.

The Commission notes some differences in the cross-border treatment of netting and collateral agreements by APRA and the CFTC. Specifically, the CFTC Cross-Border Margin Rule provides that a CSE transacting in a jurisdiction that does not reliably recognize close-out netting and/or collateral arrangements must collect initial and variation margin on a gross basis, but may post on a net basis.[205] APRA's margin regime differs in this respect in that it does not require APRA covered entities to collect or post initial or variation margin at all where the enforceability of netting agreements and/or collateral arrangements are questionable. APRA stated that it implemented these exceptions in consideration of: (i) The potential liquidity burdens associated with exchanging margin on a gross basis; (ii) the additional counterparty credit risk associated with posting collateral to a jurisdiction where insolvency laws do not provide certainty that posted collateral will be returned in the event of the counterparty's insolvency; (iii) the higher regulatory capital requirements that would apply to banking institutions for their non-netting or uncollateralized exposures; and (iv) the commercial limitations to requiring margin on a collect-only basis, or on a collect-gross and post-net basis. However, pursuant to APRA's margin rules, APRA covered entities are required to monitor the resulting uncollateralized exposures and set appropriate internal limits and controls to manage such exposures to counterparties in these jurisdictions.[206] APRA represented that although it did not prescribe a quantitative limit for such exposures, it intends to review APRA covered entities' internal thresholds, limits, and controls through its supervisory process and monitor both entity and industry levels of exposures to these non-netting jurisdictions. The Commission notes that every CSE is required to have a risk management program pursuant to § 23.600, and thus the Commission also has the authority to inquire as to the adequacy of risk management covering uncleared swaps in non-netting jurisdictions. In light of the limited scope of the difference and APRA's heightened supervisory focus, the Commission finds for purposes of § 23.160 that APRA's margin rules are comparable in outcome to the Commission's margin rules with respect to the treatment of cross-border transactions with counterparties in non-netting jurisdictions.

Further, the CFTC Cross-Border Margin Rule states that when a CSE transacts in a jurisdiction where it cannot adhere to the CFTC Margin Rule's custodial safekeeping requirements, the CSE must collect initial margin in cash, and post and collect variation margin in cash, but is not required to post initial margin.[207] APRA's margin regime, however, does not require APRA covered entities to post or collect initial margin where either it or its counterparty cannot satisfy the safekeeping requirements of Paragraph 25 of APRA's margin rules.[208] APRA explained that this provision was intended to address APRA covered entities operating in New Zealand, where the country's legal framework prevents the giving or enforcing of rights with respect to margin provided by way of security interest. APRA further stated that it intends to monitor the use of this exemption and is engaged in ongoing dialogue with New Zealand authorities. Given this explanation, the Commission believes that the use of this exemption will be limited in scope and continuously monitored by APRA. Accordingly, although the Commission acknowledges that APRA's initial margin requirements in such scenarios are less stringent than those of the CFTC, the Commission finds that they

[198] *See* CPS 226, Paragraph 66.

[199] *See* CPS 226, Paragraph 68.

[200] *See* CPS 226, Paragraph 69.

[201] *See* CPS 226, Paragraphs 68 and 69.

[202] *See* CPS 226, Paragraph 25, which states that initial margin must be held so as to ensure that: (a) the margin collected is promptly available to the collecting party in the event of the posting party's default; and (b) the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the event that the collecting party enters insolvency or bankruptcy.

[203] *See* CPS 226, Paragraph 67. APRA has represented that this exemption is intended to address legal impediments that currently exist in New Zealand because the four largest banks regulated by APRA have New Zealand subsidiaries that are subject to APRA's rules. According to APRA, entities subject to New Zealand law are not able to give, and enforce rights with respect to, margin provided by way of security interest. APRA continues to engage in ongoing dialogue with New Zealand regarding this use of this exemption.

[204] Where an APRA covered entity and its APRA covered counterparty are both members of the same margining group, APRA did not grant substituted compliance with respect the following jurisdictions: (i) Office of the Superintendent of Financial Institutions, Canada; (ii) European Commission; (iii) Hong Kong Monetary Authority; (iv) Financial Services Agency, Japan; (v) Ministry of Agriculture, Forestry and Fisheries, Japan; (vi) Monetary Authority of Singapore; and (vii) Swiss Financial Market Supervisory Authority.

[205] *See* § 23.160(d).

[206] *See* CPS 226, Paragraphs 68 and 69.

[207] *See* § 23.160(e).

[208] *See* CPS 226, Paragraph 25, which states that initial margin must be held so as to ensure that: (a) The margin collected is promptly available to the collecting party in the event of the posting party's default; and (b) the collected margin must be subject to arrangements that protect the posting party to the extent possible under applicable law in the event that the collecting party enters insolvency or bankruptcy.

are nonetheless comparable in outcome for purposes of § 23.160.

Having considered the similarities and differences described above, the Commission finds that the cross-border aspects of APRA's margin regime comparable in outcome to that of the Commission for purposes of § 23.160.

N. Supervision and Enforcement

The Commission has a long history of regulatory cooperation with APRA, including cooperation in the regulation of registrants of the Commission that are also APRA covered entities.[209] As part of APRA's ongoing prudential regulation and supervision of APRA covered entities, it will take all measures necessary to ensure that APRA's margin rules are implemented. Thus, the Commission finds that APRA has the necessary powers to supervise, investigate, and discipline entities for compliance with its margin requirements and recognizes APRA's ongoing efforts to detect and deter violations of, and ensure compliance with, the margin requirements applicable in Australia.

V. Conclusion

As detailed above, the Commission has noted several differences between the CFTC Margin Rule and APRA's margin rules. However, having considered the scope and objectives of the margin requirements for non-centrally cleared derivatives under the laws of Australia [210] the margin requirements in the broader context of APRA's prudential oversight of risk management and capital requirements, whether such margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements,[211] the ability of APRA to supervise and enforce compliance with the margin requirements for non-centrally cleared derivatives under the laws of Australia,[212] and the reciprocal nature of comity in international regulation, the Commission has determined that APRA's margin rules are comparable in outcome, for purposes of § 23.160, to the CFTC Margin Rule.

Issued in Washington, DC, on March 27, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Appendices to Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Today I am pleased to announce that the Commission has issued a decision concluding that the Australian margin rules are comparable to the CFTC rules. As a result, Australian firms may rely on compliance with Australian margin rules to satisfy CFTC requirements.

In making this substituted compliance determination, Commission staff has conducted a principles-based, holistic analysis that focuses on regulatory outcomes rather than on a strict rule-by-rule comparison. This means that market participants can rely on one set of rules—in their totality—without fear that another jurisdiction will seek to selectively impose an additional layer of regulatory obligations.

This comparability determination is another example of how the Commission is committed to showing deference to foreign jurisdictions that have comparable regulatory and supervisory regimes. Such an approach is essential to ensuring strong and stable derivatives markets that support economic growth both within the United States and around the globe.

Appendix 3—Statement of Commissioner Brian D. Quintenz

I support the issuance of the Margin Comparability Determination for Australia (Determination). As I have noted previously, in order to avoid market fragmentation and an unworkable, complex patchwork of cross-border regulations, the Commission must apply a holistic, outcomes-based approach to substituted compliance. The Commission should assess comparability by determining if the totality of a legal regime's regulations, guidance, and supervisory approach achieve comparable outcomes to the CFTC's regime, instead of engaging in a rule-by-rule analysis for identical requirements.

I support today's Determination which applies such a holistic approach and respects the sovereignty of another jurisdiction to implement important G–20 reforms, such as margin, as it deems appropriate. Moreover, the Australian Prudential Regulation Authority (APRA) has already found CFTC margin regulations to be comparable to its own, so I am pleased that the determination adopted by the Commission today appropriately reciprocates that finding.

The outcomes-based approach of today's Determination appropriately accounts for modest regulatory differences between the CFTC and Australian margin regimes. For example, although CFTC rules require initial margin to be segregated at a third party custodian, the Australian framework allows initial margin to be segregated at a third party custodian or held in some other bankruptcy-remote manner, such as the use of a trust account. The end result of both custodial arrangements is the same, however, because in the event of bankruptcy, the posting party's assets are protected. The Determination today recognizes that other regimes can achieve the same overarching policy goals as the CFTC's regulations, although they do so by different means.

Like the recently amended Comparability Determination for Japan regarding margin for uncleared swaps, the Determination before us today also limits the flow of risk back to the United States. This is because under the Commission's Cross-Border Margin Rule, when a U.S. swap dealer enters into an uncleared swap with an Australian swap dealer or end-user, it is required to collect initial margin and variation margin must be exchanged. In the case of uncleared swaps between affiliated U.S. and non-U.S. swap dealers, variation margin is always required. In light of these safeguards, I do not believe that the Determination today will result in systemic risk being ''backdoored'' into the United States.

Since the Commission first began issuing comparability determinations in 2013, we have made substantial progress toward formalizing cooperative arrangements with our international counterparts through supervisory Memorandums of Understanding (''MOUs''). MOUs facilitate information sharing and cooperation between regulators with a shared interest in supervising cross-border firms. Importantly, we have an active MOU with APRA and I know we will continue to coordinate closely to ensure appropriate oversight over our respective regulated entities.[1] Through deference and engagement, the Commission can work alongside other regulators to ensure a well-regulated, liquid, global swaps market.

Appendix 4—Statement of Commissioner Dan M. Berkovitz

I support today's Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (''Australia Determination'').

The Commission's regulations governing margin requirements for uncleared swaps (''CFTC Margin Rules'') help mitigate risks

[209] To facilitate this cooperation, the Commission has concluded memoranda of understanding with APRA with respect to the exchange of supervisory information. *See* the Commission's website at *http://www.cftc.gov/International/Memorandaof Understanding/index.htm.*

[210] *See* § 23.160(c)(3)(i).

[211] *See* § 23.160(c)(3)(ii). As discussed herein, the Commission's CFTC Margin Rule is based on the BCBS/IOSCO Framework; therefore, the Commission expects that the relevant foreign margin requirements would conform to such Framework at minimum in order to be deemed comparable to the Commission's corresponding margin requirements.

[212] *See* § 23.160(c)(3)(iii). *See also* § 23.160(c)(3)(iv) (indicating the Commission would also consider any other relevant facts and circumstances).

[1] Memorandum of Understanding, Cooperation and the Exchange of Information Related to the Supervision of Covered Firms (April 13, 2015), *https://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/cftc-apra-supervisorymou041320.pdf.*

posed by uncleared swaps to swap dealers, major swap participants, and the overall U.S. financial system.[1] In this regard, the CFTC Margin Rules—and other rules around the world requiring margin for uncleared swaps—are a fundamental component of the regulatory reforms adopted in the wake of the 2008 financial crisis.

In 2016, the CFTC adopted its cross-border margin rule to permit swap dealers and major swap participants located in non-U.S. jurisdictions to comply with the CFTC's Margin Rules by meeting the similar rules of their home jurisdiction *if* the Commission has deemed those rules comparable.[2] This framework for ''substituted compliance'' supports the global nature of the swaps market and conforms to the directive in the Dodd-Frank Act for the Commission to consult and coordinate with international regulators to establish consistent international standards for the regulation of swaps entities and activities.[3] The substituted compliance framework helps reduce duplicative and overlapping regulatory requirements where effective comparable regulation exists, facilitates the ability of U.S. market participants to compete in foreign jurisdictions, and is consistent with the principle of international comity.

The CFTC's cross-border margin rule establishes an outcomes-based approach that considers a number of factors and does not require strict conformity with the CFTC Margin Rules. As I have said before, a comparability determination should not be based solely on the home country's written laws and regulations, but also consider the country's broader system of regulation, including oversight and enforcement. In addition, the nature of the other country's relevant markets may be taken into account. Finally, in considering these issues, the Commission should keep in mind the principle of comity: The reciprocal recognition of the legislative, executive, and judicial acts of another jurisdiction.[4]

The Australia Determination finds the margin requirements for uncleared swaps under Australian laws, regulations, standards, and other materials comparable in outcome to the CFTC's Margin Rules. The CFTC staff engaged with staff of the Australian Prudential Regulation Authority (''APRA''), and evaluated prudential standards and other materials provided by APRA to develop an understanding of APRA's regulatory objectives, the products and entities subject to margin requirements, the treatment of inter-affiliate swaps, and other aspects of APRA's margin rules. The in-depth analysis outlined in today's Australia Determination reflects a holistic understanding by the Commission of APRA's margin rules and its prudential oversight practices. The analysis also observes that the CFTC Margin Rules and APRA's margin requirements for uncleared swaps are not identical. In a number of instances, APRA's specific requirements are not as comprehensive as the CFTC's Margin Rules. However, the determination explains how mitigating factors—such as certain of APRA's risk management requirements and differences in the size of the two countries' swap markets and of the market participants in them—support a determination that the two systems of regulation have similar outcomes.

For example, unlike the CFTC Margin Rule, APRA only requires that variation margin be exchanged between counterparties whose average notional amount of uncleared swaps exceeds a certain threshold. However, as noted in the determination, Australia's non-centrally cleared swaps market is highly concentrated in large entities that exceed that threshold, and the large majority of transactions would therefore be subject to variation margin. Furthermore, as noted in the determination, if an Australian entity that would otherwise be subject to the CFTC Margin Rules, but for substituted compliance, enters into swaps with any U.S. entity covered by the CFTC Margin Rules, then both entities are required to exchange margin under our rules. This reduces the potential for risks from swap activities overseas finding their way to the United States.

As with other jurisdictions where the legal and regulatory structure does not mirror our own, and the substituted compliance determinations are based on the overall outcome of the regulatory system, subsequent monitoring may be appropriate to confirm that our initial understanding of the regulatory structure and the expected outcomes is accurate. Accordingly, I encourage the CFTC staff to periodically assess the implementation of this determination to confirm our expectations are accurate.

I thank the CFTC staff for their thorough work on this determination and appreciate their responsiveness to our comments and suggestions. I would also like to thank my fellow Commissioners for their collaboration in helping us reach this positive outcome.

[FR Doc. 2019–06319 Filed 4–2–19; 8:45 am]

BILLING CODE 6351–01–P

[1] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016).

[2] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants–Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, at section 752 (2010).

[4] *See* Restatement (Third) of The Foreign Relations Law in the United States, section 101 (1987) (Am. Law Inst. 2019); *https://www.law.cornell.edu/wex/comity.*

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC55

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing a final rule to revise the method by which the statutory three percent limitation on administrative costs (referred to throughout this notice as the ''three percent administrative cost cap'') is applied under the Direct Component, Comprehensive Plan Component, and Spill Impact Component under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, (RESTORE Act or Act). This revision will help ensure that the Gulf Coast States and localities have the necessary funding to efficiently and effectively oversee and manage projects and programs for ecological and economic restoration of the Gulf Coast Region while ensuring compliance with the statutory three percent administrative cost cap.

DATES: Effective May 3, 2019.

FOR FURTHER INFORMATION CONTACT: The Office of Gulf Coast Restoration at *restoreact@treasury.gov,* or Laurie McGilvray, Program Director, at 202–622–7340.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act makes funds available for the ecological and economic restoration of the Gulf Coast Region, and certain programs with respect to the Gulf of Mexico, through a trust fund in the Treasury of the United States known as the Gulf Coast Restoration Trust Fund (trust fund). The trust fund holds 80 percent of the administrative and civil penalties paid under the Federal Water Pollution Control Act after July 6, 2012, in connection with the *Deepwater Horizon* Oil Spill.

Treasury administers two of the five components established by the Act, the Direct Component and Centers of Excellence Research Grants Program. The Act also established an independent Federal entity, the Gulf Coast Ecosystem Restoration Council (Council), to administer two components of the Act, the Comprehensive Plan Component and the Spill Impact Component. The National Oceanic and Atmospheric Administration (NOAA) administers one component, the NOAA RESTORE Act Science Program. This final rule only affects grants under the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Act, which are collectively referred to throughout this notice as the three ''components.''

On December 14, 2015, Treasury promulgated final regulations concerning the RESTORE Act, codified at 31 CFR part 34, which became

effective on February 12, 2016 (the ''regulations''). 80 FR 77239. They contain two relevant limitations on the amount of grant funds that may be used for administrative costs.

First, the regulations subject grants to government-wide cost principles. They define ''administrative costs'' as ''indirect costs for administration'' and provide that such ''[c]osts must comply with administrative requirements and cost principles in applicable federal laws and policies on grants.'' 31 CFR 34.2, 34.200(a)(1). They exclude ''indirect costs that are identified specifically with, or readily assignable to, facilities'' from the definition of ''administrative costs.''

Indirect cost principles are contained in the Office of Management and Budget (OMB) ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (the Uniform Guidance) in 2 CFR part 200, which Treasury has adopted. 2 CFR 1000.10. Indirect costs are defined in 2 CFR 200.56 and are allowable subject to Subpart E of 2 CFR part 200 and Appendix VII.

Under Subpart E, a grant recipient's negotiated indirect cost rate agreement (NICRA) with its cognizant agency determines the allowable indirect cost rate for the recipient's grants, taking into account the unique circumstances and cost structure of the recipient. The NICRA, or a de minimis rate if elected, must be used across all of the recipient's federal grants.[1] 2 CFR 200.414(c)(1). In accordance with the Uniform Guidance, Appendix VII—State and Local Government and Indian Tribe Indirect Cost Proposals, these allowable indirect costs are computed on each individual Federal award.

The second limitation on the amount of RESTORE Act grant funds that can be used for administrative costs under the three components is a three percent administrative cost cap. The Act provides that ''[o]f the amounts received by a Gulf Coast State . . ., not more than 3 percent may be used for administrative costs . . . .'' 33 U.S.C. 1321(t)(1)(B)(iii)(I). The Act does not specify the method by which this three percent administrative cost cap is to be applied. Treasury's regulations, however, currently provide that the three percent administrative cost cap is to be applied on a grant-by-grant basis: ''The three percent limit is applied to the total amount of funds received by a recipient under each grant.'' 31 CFR 34.204(a). In other words, under the current regulations, the administrative costs associated with each particular grant may not exceed three percent of the total amount of that grant.

II. Description of the Proposed Rule

On June 20, 2018, Treasury published a Notice of Proposed Rulemaking (NPRM) proposing to provide a recipient the option to apply the three percent administrative cost cap, within each component, on either a grant-by-grant basis or on an aggregate basis. 83 FR 28563. The NPRM proposed that the three percent administrative cost cap may be applied, for each component, to a Gulf Coast State, coastal political subdivision, or coastal zone parish's trust fund allocation, *i.e.,* to the aggregate of (1) all grants received by it under that component and (2) the amount in the trust fund for the same component that is allocated to, but not yet received by it. Amounts ''allocated to, but not yet received'' refer only to funds presently in the trust fund and not to future deposits into the trust fund[2] and include the following amounts with respect to each component: (1) With respect to the Direct Component, amounts made available in equal shares for the Gulf Coast States in accordance with 31 CFR 34.302; (2) with respect to the Comprehensive Plan Component, the estimated aggregate cost of all projects approved for funding included in all approved Funded Priorities Lists; and (3) with respect to the Spill Impact Component, amounts allocated to the Gulf Coast States in accordance with 31 CFR 34.502 and 40 CFR 1800.500.

The Act does not require that Treasury administer the administrative cost cap on a grant-by-grant basis, and because Treasury's regulations allocate precise sums to specific entities based on criteria in the Act, it is possible to administer it on an aggregate basis. In the NPRM, Treasury proposed permitting recipients, if they so choose, to allocate administrative costs by component from their ''pool'' in the trust fund toward the indirect costs in their grants to recover the maximum amount of indirect costs allowed under the Act, and to more efficiently and effectively oversee and manage projects and programs. Under the proposal, if a recipient's allowable indirect costs for administration for one grant are less than three percent of the total amount of that grant, the difference would be available to cover allowable indirect costs for administration exceeding three percent on other grants. However, at no time would the total amount of administrative costs of a Gulf Coast State, coastal political subdivision, or coastal zone parish be permitted to exceed three percent of the aggregate of (1) all grants received by it under one of the three components, and (2) the amount in the trust fund for the same component that is allocated to, but not yet received by such Gulf Coast State, coastal political subdivision, or coastal zone parish. Also, at no time would a recipient be able to recover more in indirect costs under an individual award than it would receive under its NICRA or its de minimis rate. Treasury will address a recipient's selection of its method for calculating administrative indirect costs during the application submission and review process or in reviewing a request to amend a prior award. At least annually, Treasury will post publicly the amounts available in the administrative cost ''pool'' by component, simultaneously with its updates to the trust fund allocations.

In § 34.204(a)(1)(ii) of the proposed rule, Treasury also added ''recipient and'' before ''subrecipient'' in the last sentence to clarify that Federal grant law and policies apply to recipient costs as well as to subrecipient costs. (As discussed below, this addition is located at section 34.204(a)(2) in the final rule.) Treasury also stated in the proposed rule that it would conduct a retrospective analysis of the aggregate method no later than seven years after the date this final rule becomes effective, to ''consider whether the revision ensures that the Gulf Coast states, coastal political subdivisions, and coastal zone parishes have the necessary funding to efficiently and effectively oversee and manage projects and programs for ecological and economic restoration of the Gulf Coast Region while ensuring compliance with the statutory three percent administrative cost cap, and whether it helps them to administer RESTORE Act grant projects effectively and efficiently.'' NPRM § 34.204(a)(2). Treasury has removed the second use of ''effectively and efficiently'' as redundant with the first use of it in the sentence. (As explained below, Treasury

[1] Subpart E provides that when a recipient has never had a NICRA and receives $35 million or less in direct federal funding, a de minimis rate of 10 percent of modified total direct costs may be used to calculate its allowable indirect costs in lieu of establishing a NICRA. 2 CFR 200.414(f), 2 CFR part 200, Appendix VII(D)(1)(b).

[2] BP Exploration & Production Inc. began making annual civil penalty payments in April 2017, and is expected to continue to make annual payments through mid-2031 pursuant to a consent decree entered on April 4, 2016 under the Federal Water Pollution Control Act (Clean Water Act), of which eighty percent of the total will be deposited into the Gulf Coast Restoration Trust Fund and invested. The annual payments into the trust fund through 2031 are expected to total $4.4 billion. In 2032, BP will make a final payment in the form of penalty interest.

has also moved the language in § 34.204(a)(2) of the proposed rule to § 34.204(a)(3) of the final rule.)

III. Public Comments and Changes From the Proposed Rule

The NPRM invited public comments on all aspects of the proposed revision for 30 days. Nine commenters submitted written responses to the NPRM, all of which Treasury has reviewed. The following is a discussion of relevant comments and Treasury's responses. Treasury is adopting the rule as proposed with only two changes, as discussed below.

One commenter asked whether the three percent for administrative costs may be used by a grantee together with the de minimis ten percent for indirect cost limits.[3] Under Treasury's regulations, administrative costs are defined as ''indirect costs for administration'' (*i.e.,* not direct costs for administration). If a recipient has a de minimis rate of ten percent of modified total direct costs, the recipient may be reimbursed for indirect costs for administration up to three percent of the total award amount. This calculation currently is applied to each grant. Under this final rule, a recipient eligible to use the de minimis rate may be able to be reimbursed for indirect costs for administration that exceed the three percent cap for a particular grant, up to ten percent of the modified total direct costs, if that recipient has received less than three percent of the total award amount for indirect costs for administration on the total of the aggregate of (1) all grants received by it under that component and (2) the amount in the trust fund for the same component that is allocated to, but not yet received by it.

Three commenters expressed support for the aggregate method because it would allow greater reimbursement for indirect costs incurred.[4] One commenter expressed support for the greater flexibility the proposed rule would provide to recipients in applying the three percent administrative cost cap.[5]

Four commenters requested clarification as to whether the proposed rule would apply to previously awarded grants.[6] This final rule does not require that recipients change the method by which they calculate their administrative costs. It provides an alternative to the grant-by-grant method required under Treasury's current regulation. Indirect costs on previously awarded grants under each of the three components may be reimbursed using the aggregate method, up to the amount of the recipient's NICRA or de minimis rate, provided sufficient funds are available in the recipient's administrative cost pool. A Direct Component, Comprehensive Plan Component or Spill Impact Component recipient with sufficient funds available in its administrative cost pool wishing to recover indirect costs in an amount up to its NICRA or de minimis rate on a prior award may request a grant amendment. Treasury and the Council will provide guidance to their respective recipients to assist them in applying the aggregate method to calculate administrative costs and to keep track of the amount available for administrative costs in their administrative cost pool for each component.

Treasury also solicited information from eligible recipients as to how they would manage and track administrative indirect costs under each method. One eligible recipient explained that under the aggregate method, for each component, it will update the calculations of its administrative cost pools at least annually and reconcile its calculations with Treasury's calculations.[7] Treasury and the Council will provide technical assistance to their respective recipients to help ensure that administrative indirect costs are accurately tracked across grants.

Treasury also asked eligible recipients in the NPRM whether there was any additional burden associated with managing the administrative indirect cost cap using the aggregate method. One eligible recipient responded that the use of the aggregate method would impose an ''additional burden'' under all three components, but added that the additional burden would be less than the burden currently imposed under the grant-by-grant method, so that the net effect would be less of a burden upon recipients.[8]

Two commenters suggested that the language in § 34.204(a)(1)(ii) of the proposed rule be reorganized for clarity.[9] Specifically, they pointed out that the final two sentences of § 34.204(a)(1)(ii) of the proposed rule differ in subject matter from the rest of the paragraph and should therefore be in a different paragraph. Treasury agrees and has moved those sentences to § 34.204(a)(2) of the final rule. Treasury also has moved the language in § 34.204(a)(2) of the proposed rule to § 34.204(a)(3) of the final rule.

One commenter requested that Treasury clarify in the preamble that projects under the Comprehensive Plan Component that are under consideration by the Council but not yet approved for funding are not included in the aggregate three percent cost calculation.[10] The clarification has been made to the reference to the Comprehensive Plan Component's Funded Priorities List in Section II. Description of the Proposed Rule above.

IV. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Six of the 20 Louisiana parishes and six of the 23 Florida counties eligible to receive grants under the RESTORE Act have fewer than 50,000 residents. (2010 U.S. Census) and thus qualify as small governmental jurisdictions under the Regulatory Flexibility Act. (5 U.S.C. 601(5)). Treasury anticipates that this final rule will have no significant economic impact on these small entities because all recipients have the option to continue applying the three percent administrative cost cap on a grant-by-grant basis. Accordingly, Treasury certifies that this final rule will not have a significant impact upon a substantial number of small entities, and no regulatory flexibility analysis is required.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

This final rule affects those entities in the five Gulf Coast States that are eligible to receive funding under the RESTORE Act, and is focused on the environmental restoration and economic recovery of the Gulf Coast Region in the aftermath of the Deepwater Horizon oil spill. The amounts made available from the trust fund will continue efforts that provide for the long-term health of the ecosystems and economy of this region.

[3] Tangipahoa Parish, Louisiana.

[4] Texas Commission on Environmental Quality, Alabama Gulf Coast Recovery Council, and Mississippi Department of Environmental Quality.

[5] Mississippi Department of Environmental Quality.

[6] Texas Commission on Environmental Quality, Alabama Gulf Coast Recovery Council, Mississippi Department of Environmental Quality, and Gulf Coast Ecosystem Restoration Council.

[7] Texas Commission on Environmental Quality.

[8] Texas Commission on Environmental Quality.

[9] Texas Commission on Environmental Quality and Gulf Coast Ecosystem Restoration Council.

[10] Gulf Coast Ecosystem Restoration Council.

Because it increases recipients' flexibility in how they apply the statutory three percent administrative cost cap, Treasury believes this final rule is an Executive Order 13771 deregulatory action. In accordance with Executive Order 12866, as supplemented by Executive Order 13563, OMB has designated this rule as a significant regulatory action and has reviewed this final rule. This final rule finalizes without significant change the proposed rule discussed above.

C. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will become effective 30 days after publication.

D. Catalog of Federal Domestic Assistance

The affected program for Treasury is listed in the Catalog of Federal Domestic Assistance under 21.015, Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States. The affected programs for the Council are listed under 87.051, and 87.052, for its Comprehensive Plan and Spill Impact Components, respectively.

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 regulatory actions. In particular, the Unfunded Mandates Reform 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. Treasury believes that because this final rule will not result in an aggregate expenditure by a state, local, or tribal government, or by the private sector of $100,000,000 or more, the Unfunded Mandates Reform Act does not require an analysis of this final rule.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant Programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts and trustees, Wildlife.

For the reasons set forth herein, the Department of the Treasury amends 31 CFR part 34 to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 34.204 by revising paragraph (a) to read as follows:

§ 34.204 Limitations on administrative costs and administrative expenses.

(a)(1) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish from Treasury under the Direct Component, or from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit on administrative costs may be applied to the total amount of funds received by a recipient under each of the three components either on a grant-by-grant basis or on an aggregate basis. For the latter method, amounts used for administrative costs under each of the three components may not at any time exceed three percent of the aggregate of:

(i) The amounts received under a component by a recipient, beginning with the first grant through the most recent grant, and

(ii) The amounts in the Trust Fund that are allocated to, but not yet received under such component by a Gulf Coast State, coastal political subdivision, or coastal zone parish under § 34.103, consistent with the definition of administrative costs in § 34.2.

(2) The three percent limit does not apply to the administrative costs of subrecipients. All recipient and subrecipient costs are subject to the cost principles in Federal laws and policies on grants.

(3) Treasury will conduct a retrospective analysis of this provision no later than seven years after the date it becomes effective. This review will consider whether the revision ensures that the Gulf Coast States, coastal political subdivisions, and coastal zone parishes have the necessary funding to efficiently and effectively oversee and manage projects and programs for ecological and economic restoration of the Gulf Coast Region while ensuring compliance with the statutory three percent administrative cost cap.

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2019–06404 Filed 4–2–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 54

[Docket ID: DOD–2017–OS–0045]

RIN 0790–AJ98

Allotments for Child and Spousal Support

AGENCY: Office of the Under Secretary of Defense (Comptroller), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation that relates to allotments for child and spousal support because it duplicates DoD's internal policy on statutorily required child or child and spousal support allotments that cover members of the Military Services on extended active duty. This internal policy is located in the DoD Financial Management Regulation, Volume 7A, Chapter 41 ''Garnishments and Other Involuntary Allotments.''

DATES: This rule is effective on April 3, 2019.

FOR FURTHER INFORMATION CONTACT: Kellie Allison at 703–614–0410.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's website.

DoD internal guidance will continue to be published in DoD's Financial Management Regulation, Volume 7A, Chapter 41, available at *http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a_41_Dec10.pdf.*

Removal of this part does not reduce burden or costs to the public as it will not change how notification is provided under Volume 7A, Chapter 41. This rule is not significant, therefore the requirements of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply.

List of Subjects in 32 CFR Part 54

Alimony, Child support, Military personnel, Reporting and recordkeeping requirements, Wages.

PART 54—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 54 is removed.

Dated: March 29, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–06479 Filed 4–2–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0157]

Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

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

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 1, will be enforced from 11 a.m. on April 12, 2019, through 1 a.m. on April 13, 2019, or as announced via Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Jennae N. Cotton, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display from 11 a.m. on April 12, 2019 until 1 a.m. on April 13, 2019, or as announced via Broadcast Notice to Mariners. This notice is issued under authority of 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1. In addition to this notice in the **Federal Register,** the Coast Guard plans to provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 11 a.m. on April 12, 2019 until 5 p.m. on April 12, 2019, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 8:30 p.m. to 9 p.m. on April 12, 2019 the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37° 46′ 36″ N, 122° 22′ 56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 15 minute fireworks display, scheduled to begin at the conclusion of the baseball game, at approximately 10 p.m. on April 12, 2019, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37° 46′ 36″ N, 122° 22′ 56″ W (NAD 83) for the San Francisco Giants Fireworks listed in 33 CFR 165.1191, Table 1, Item number 1. This safety zone will be in effect from 11 a.m. on April 12, 2019 until 1 a.m. on April 13, 2019, or as announced via Broadcast Notice to Mariners.

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

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

Dated: March 28, 2019.

Rebecca W. Deakin,

Lieutenant Commander, U.S. Coast Guard, Chief, Waterways Management Division.

[FR Doc. 2019–06414 Filed 4–2–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1067]

RIN 1625–AA00

Safety Zone: Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the navigable waters of the Cape Fear River in Brunswick County and New Hanover County, North Carolina. These temporary safety zones are intended to restrict vessel traffic on the Cape Fear River while a vessel transports and offloads one new Neo-Panamax container crane to the North Carolina State Port in Wilmington, North Carolina. The first temporary safety zone will be enforced for one day during vessel transit from April 1 through April 30, 2019, and the second temporary safety zone for offload will be enforced for one day within five days after transit. This action is intended to restrict vessel traffic on the Cape Fear River to protect mariners and vessels from the hazards associated with transporting and offloading the assembled container crane. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or designated representative.

DATES: This rule is effective without actual notice from April 3, 2019, through May 5, 2019. For the purposes of enforcement, actual notice will be used from April 1, 2019, through April 3, 2019.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to *https://www.regulations.gov,* type USCG–2018–1067 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, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: 910–772–2221, email: *Matthew.I.Tyson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On November 14, 2018, the North Carolina State Port Authority notified the Coast Guard that they will be transporting one pre-assembled Neo-Panamax container crane up the Cape Fear River to the North Carolina State Port in Wilmington, North Carolina, and offloading it. Due to crane preconstruction and vessel travel times, the crane arrival time was not set. The transit path will be from the Cape Fear River Entrance Buoy, north through the Cape Fear River to the turning basin, and ending at the North Carolina State Port in Wilmington, North Carolina. The planned offload date is two days after transit, but weather conditions may change the offload date to any day within five days after transit. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with transporting and offloading the container crane would be a concern for anyone transiting the Cape Fear River. In response, on January 31, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Cape Fear River, Wilmington, NC* (84 FR 619). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to arrival of a new Neo-Panamax container crane. No comments were received during our comment solicitation period which ran through March 4, 2019. During the comment period, the North Carolina State Port Authority requested a new potential vessel arrival period from April 1 through April 30, 2019, instead of March 20 through April 15, 2019, as proposed in the NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during transport and offload of the container crane.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP North Carolina has determined that potential safety hazards associated with the arrival of a new Neo-Panamax container crane would be a safety concern for anyone transiting the Cape Fear River. The purpose of this rule is to protect persons, vessels, and the marine environment on the Cape Fear River during transport and offload of the container crane.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 31, 2019. There is a minor change in the regulatory text of this rule from the proposed rule, shifting the vessel's arrival period. The vessel transporting the container crane will arrive sometime from April 1 through April 30, 2019, instead of March 20 through April 15, 2019, as proposed in the NPRM. In addition, the term Post-Panamax has been changed to Neo-Panamax to accurately describe the type of container crane being delivered.

This rule establishes a safety zone on a portion of the Cape Fear River to be enforced during the transit of a vessel transporting one pre-assembled Neo-Panamax container crane up the Cape Fear River from April 1 through April 30, 2019, and offloading the container within five days after transit. The currently scheduled transit date is April 6, 2019, and the currently scheduled offload date is April 8, 2019. The transport is expected to take between five and seven hours and the offload is expected to take up to five hours. Exact enforcement times will be based on tide schedules, anticipated sea conditions, and weather conditions, therefore the exact enforcement times will be announced by broadcast to mariners at least two days prior to the transit. The safety zone for the transit includes all navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to the Cape Fear Memorial Bridge, a length of approximately 26 miles. This portion of the safety zone will be enforced until the vessel transporting the crane has been safely moored at North Carolina State Port in Wilmington, North Carolina. The safety zone for the offload will include all navigable waters of the Cape Fear River within 200 yards of the transport vessel while it is moored. The duration of this zone is intended to protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during the transport and offload of the container crane. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative. There will be a pre-designated safety vessel ahead of the transport vessel to monitor the flow of traffic and inform mariners that the container crane transit is in progress. Vessels that are less than 40 feet in height and will not impede the transport vessel may request permission to pass through the safety zone or remain in place as the transport vessel passes. The Fort Fisher and Bald Head ferries will be able to operate on their normal schedule as long as the scheduled transit will not come within one mile of the transport vessel and they receive permission from the Captain of the Port North Carolina or a designated representative. The strict height restriction of 40 feet is required because portions of the transported crane extend over the water on both sides of the transport vessel.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit portions of the Cape Fear River for 2 non-consecutive days from April 1 through May 5, 2019. Vessel traffic will not be allowed to enter or transit a portion of the Cape Fear River for approximately five to seven hours during the transit of the transport vessel, and for up to five hours during the offload after the transit. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone. This portion of the Cape Fear River has been determined to be a high traffic area. This rule allows vessels to request permission to pass through the moving safety zone or remain in place as long as they are under the height restriction of 40 feet.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section 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 safety zone lasting five to seven hours on all navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to the Cape Fear Memorial Bridge, a length of approximately 26 miles, and a safety zone lasting up to five hours that would prohibit entry within 200 yards of a moored vessel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–1067 to read as follows:

§ 165.T05–1067 Safety Zone; Cape Fear River, Brunswick County and New Hanover County, NC.

(a) *Location.* The following areas are safety zones:

(1) *Safety zone 1.* All navigable waters of the Cape Fear River from the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River from shore to shore to the Cape Fear Memorial Bridge, in Brunswick County and New Hanover County, NC;

(2) *Safety zone 2.* Waters of the Cape Fear River within 200 yards around the vessel transporting the new Neo-Panamax container crane to the North Carolina State Port Authority in Wilmington, North Carolina, while the vessel is moored at the North Carolina State Port in Wilmington, North Carolina.

(b) *Definitions.* As used in this section—

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Participants means persons and vessels involved in support of the container crane transport and offload.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of participants, entry into or remaining in these safety zones is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910–343–3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

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

(e) *Enforcement periods.* This regulation will be enforced for:

(1) *Zone 1 during vessel transit.* Vessel transit is anticipated to take one day and will occur from April 1 through April 30, 2019;

(2) *Zone 2 during offload of the Neo-Panamax container crane.* Offload will take one day and will occur within five days after vessel transit is complete.

(f) *Public notification.* The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF–FM marine channel 16.

Dated: March 28, 2019.

Bion B. Stewart,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2019–06400 Filed 4–2–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2018–0528; FRL–9991–62–Region 4]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The Environmental Protection Agency (EPA) is granting Mississippi final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on October 29, 2018, and provided for public comment. One comment was received in support of authorizing Mississippi's proposed revisions. This comment can be reviewed in the docket for this action under Docket ID No. EPA–R04–RCRA–2018–0528. No further opportunity for comment will be provided.

DATES: This final authorization is effective April 3, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–RCRA–2018–0528. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Leah Davis, Materials and Waste Management Branch, RCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What changes to Mississippi's hazardous waste program is EPA authorizing with this action?

On June 1, 2018, Mississippi submitted a complete program revision application seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. EPA now makes a final decision that Mississippi's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this Final Authorization, please see the Proposed Rule published in the October 29, 2018 **Federal Register** at 83 FR 54304.

B. What is codification and is EPA codifying Mississippi's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Mississippi's revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart Z, for the authorization of Mississippi's program changes at a later date.

C. Statutory and Executive Order Reviews

This final authorization revises Mississippi's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please

see the Proposed Rule published in the October 29, 2018 **Federal Register** at 83 FR 54304. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective April 3, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 18, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–06486 Filed 4–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2018–0527; FRL–9991–61–Region 4]

Kentucky: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The Environmental Protection Agency (EPA) is granting Kentucky final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a Proposed Rule on September 21, 2018, and provided for public comment. Two substantive comments were received on Kentucky's proposed revisions. These comments are addressed in this Final Authorization.

DATES: This Final Authorization is effective April 3, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–2018–0527. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Audrey Baker, Materials and Waste Management Branch, RCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8483; fax number: (404) 562–9964; email address: *baker.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What changes to Kentucky's hazardous waste program is EPA authorizing with this action?

On April 13, 2018, Kentucky submitted a final complete program revision application seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. EPA now makes a final decision that Kentucky's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this Final Authorization, please see the Proposed Rule published in the September 21, 2018 **Federal Register** at 83 FR 47858.

B. What comments were received on Kentucky's proposed authorization and how is EPA responding to these comments?

EPA received two substantive comments on its September 21, 2018 proposed authorization of Kentucky's hazardous waste program revisions. Specifically, EPA received adverse comments from the Sierra Club (''Commenter''). These comments are provided in the docket for today's final action. *See* Docket ID No. EPA–R04–RCRA–2018–0527 at *www.regulations.gov.* A summary of the adverse comments and EPA's responses are provided below.

Comment 1: The Commenter contends that EPA may not approve Kentucky's maximum concentration limit for selenium in groundwater at 401 KAR 39:090, Section 1(1), because it is higher than the Federal level in Table 1 of 40 CFR 264.94(a). Specifically, Kentucky's maximum concentration limit for selenium in groundwater is 0.05 milligrams per liter (mg/l), which is five times higher than the maximum Federal standard listed in 40 CFR 264.94(a), Table 1, which is 0.01 mg/l. The Commenter states that because this standard is ''weaker'' than the Federal analog, and because EPA has not established an ''alternate limit'' under the procedures of 40 CFR 264.94, the Kentucky concentration limit should not be approved.

Response 1: As the Commenter correctly notes, Kentucky replaces the federal Table 1 in 40 CFR 264.94(a) with its own Table 1 at 401 KAR 39:090, Section 1(1). In Kentucky's April 13, 2018 program revision application, Kentucky noted its replacement of the Federal Table 1 with its own Table, and also specified that its replacement Table is based on the current Federal Maximum Contaminant Levels (MCLs) for all listed constituents. EPA analyzed these substitute constituent concentrations and confirmed that they are equivalent to the federal MCLs.

In its Proposed Rule, EPA concluded that Kentucky's replacement Table 1 is ''functionally equivalent'' to the Federal table at 40 CFR 264.94(a). For the reasons set forth below, EPA affirms this determination and will proceed with authorization of Kentucky's State-specific groundwater concentration limit for selenium.

By way of background, the Federal groundwater concentration limits in 40 CFR 264.94(a), Table 1, were promulgated in 1982 and have remained unchanged since that time. *See* 47 FR 32274, 32350 (July 26, 1982). These groundwater concentration limits serve as a trigger for corrective action for regulated units under post-closure care and were originally based on the health-based concentration limits found in the National Interim Primary Drinking Water Regulations under the Safe Drinking Water Act. *See* 47 FR at 32285. These National Interim Primary Drinking Water Regulations were later finalized to include the current MCLs, which were subject to notice and comment rulemaking and codified in 40 CFR part 141. EPA finalized the MCL for

selenium in 1992 and set it at 0.05 mg/l. *See* 40 CFR 141.62(b). All MCLs are promulgated under the authority of the Safe Drinking Water Act and are required to be reviewed every six years. *See* 42 U.S.C. 300g–1(b)(9). The selenium MCL has undergone such review and EPA has determined that the 0.05 mg/l standard continues to be appropriate. *See* 82 FR 3518 (Jan. 11, 2017).

Although the regulations at 40 CFR 141.62 apply to ''community water systems and non-transient, non-community water systems'' as the Commenter correctly notes, EPA often relies on MCLs, in conjunction with health-based screening levels and background levels, for purposes of groundwater investigation and cleanup, with the goal of cleaning up groundwater to its maximum beneficial use, which is often as a source of drinking water. For example, Superfund cleanups conducted under the Comprehensive Environmental Response, Compensation and Liability Act utilize the Regional Screening Levels (RSLs) found at *https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables,* as well as the primary (health-based) MCLs, for purposes of establishing groundwater screening and cleanup levels. In addition, the Federal Coal Combustion Residuals (CCR) Rule uses the federal MCLs for purposes of setting groundwater protection standards. *See* 40 CFR 257.95(h). As a result, the Commenter's statement that the selenium MCL is not relevant for purposes of groundwater protection is inaccurate.

Comment 2: The Commenter argues that EPA's proposed authorization of the portions of Kentucky's program that relate to EPA's Checklist 235, which is the Federal regulation creating an exclusion from the definition of hazardous waste for certain coal combustion residuals, is inappropriate given that certain portions of the Federal Subtitle D CCR Rule have been vacated by the Court in *Utility Solid Waste Activities Group, et al.* v. *EPA* (D.C. Cir. Aug. 21, 2018).

Response 2: The language of 40 CFR 261.4(b)(4) revised in the 2015 CCR Rule was not challenged nor impacted by the decision in that case. As a result, this comment presents no basis to alter or re-evaluate EPA's decision to proceed with authorization for the portions of Kentucky's program that relate to Checklist 235.

C. What is codification and is EPA codifying Kentucky's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Kentucky's revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart S, for the authorization of Kentucky's program changes at a later date.

D. Statutory and Executive Order Reviews

This final authorization revises Kentucky's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the Proposed Rule published in the September 21, 2018 **Federal Register** at 83 FR 47858. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective April 3, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 20, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–06485 Filed 4–2–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2019–0003; Internal Agency Docket No. FEMA–8573]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from

private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Fairmont, City of, Marion County	540099	February 14, 1977, Emerg; July 2, 1987, Reg; April 5, 2019, Susp.	April 5, 2019	April 5, 2019.
Granville, Town of, Monongalia County	540272	April 7, 1975, Emerg; December 15, 1983, Reg; April 5, 2019, Susp.	.....do*	Do.
Marion County, Unincorporated Areas	540097	August 21, 1975, Emerg; July 4, 1988, Reg; April 5, 2019, Susp.	.....do	Do.
Monongalia County, Unincorporated Areas	540139	October 31, 1975, Emerg; May 1, 1984, Reg; April 5, 2019, Susp.	.....do	Do.
Morgantown, City of, Monongalia County	540141	January 23, 1975, Emerg; August 1, 1979, Reg; April 5, 2019, Susp.	.....do	Do.
Star City, Town of, Monongalia County	540273	April 18, 1975, Emerg; August 1, 1978, Reg; April 5, 2019, Susp.	.....do	Do.
Westover, City of, Monongalia County	540274	January 27, 1975, Emerg; August 1, 1978, Reg; April 5, 2019, Susp.	.....do	Do.
Region VI				
Texas:				
Millsap, City of, Parker County	480107	N/A, Emerg; August 28, 2013, Reg; April 5, 2019, Susp.	.....do	Do.
Mingus, City of, Palo Pinto County	480518	January 28, 1998, Emerg; September 1, 2004, Reg; April 5, 2019, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Ranger, City of, Eastland County	480205	December 15, 1998, Emerg; July 1, 1999, Reg; April 5, 2019, Susp.	.....do	Do.
Strawn, City of, Palo Pinto County	480965	May 20, 1987, Emerg; November 1, 1989, Reg; April 5, 2019, Susp.	.....do	Do.
Weatherford, City of, Parker County	480522	September 13, 1974, Emerg; August 5, 1986, Reg; April 5, 2019, Susp.	.....do	Do.
Region IX				
California: Foster City, City of, San Mateo County	060318	April 13, 1973, Emerg; January 7, 1977, Reg; April 5, 2019, Susp.	April 5, 2019	April 5, 2019.

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

Dated: March 22, 2019.

Katherine B. Fox,

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

[FR Doc. 2019–06448 Filed 4–2–19; 8:45 am]

BILLING CODE 9110–12–P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1002, 1012, 1104, 1110, 1111, 1113, 1130, 1132, 1150, 1152, 1155, 1182, 1244, 1312, and 1313

[Docket No. EP 747]

Payment, Filing, and Service Procedures

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) adopts modifications to its rules pertaining to certain payment, filing, and service procedures. The adopted rule also updates and clarifies fees for copying, printing, and related services and removes outdated language from the Board's regulations.

DATES: This rule is effective on May 10, 2019.

ADDRESSES: Requests for information or questions regarding this final rule should reference Docket No. EP 747 and be submitted via the Board's e-filing format or in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at *www.stb.gov* at the E-Filing link.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher, (202) 245–0355. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In April 2017, the Board established its Regulatory Reform Task Force (RRTF) to comply with the spirit of Executive Order 13777. The RRTF's mission is to identify Board rules and practices that are burdensome, unnecessary, or outdated and to recommend how they should be addressed. *See Regulatory Reform Task Force,* EP 738 (STB served June 20, 2017). In a status report issued in May 2017, the RRTF identified the Board's payment and filing procedures as a potential area for reform and, following stakeholder input, recommended in its November 2017 status report that the Board update procedural and filing rules that are in need of modernization.[1] The Board issued a notice of proposed rulemaking to revise and update its regulations relating to methods of payment, filing procedures, electronic service of Board decisions, and fees for copying, printing, and related services. *Payment, Filing, & Serv. Procedures* (*NPRM*), EP 747 (STB served Aug. 24, 2018) (83 FR 42852). The Board received comments on the *NPRM* from the National Association of Reversionary Property Owners (NARPO), Gordon MacDougall, and the Western Coal Traffic League (WCTL).

After considering the comments and reviewing the proposed procedures, the Board is adopting a final rule with modifications to the electronic service (e-service) proposal. The final rule also removes references to ''computer diskettes.'' The text of the final rule is below.

The proposed rule. The *NPRM* outlined proposals intended to promote increased use of electronic filing and payment systems, which would result in cost savings to both the Board and the public.[2] These proposals would also increase the accessibility of information relating to proceedings and functions of the Board.

Specifically, the *NPRM* proposed to revise Board filing fee payment options by adding an electronic payment option. *NPRM,* EP 747, slip op. at 2–4. The *NPRM* explained that the Board would implement the electronic payment option through *Pay.gov*, a website operated by the U.S. Department of the Treasury that allows payment of government fees through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Given the availability and efficiency of an electronic payment option, the *NPRM* proposed to eliminate billing accounts and direct credit card payments to the Board. *NPRM,* EP 747, slip op. at 3. The *NPRM* proposed corresponding payment option changes to the regulations governing fees for recordations, water carrier tariffs, and contract summaries.

The *NPRM* explained that these payment option changes would eliminate the need to require paper filings for initial pleadings and other pleadings with associated fees, thereby allowing expanded use of electronic filing (e-filing). *NPRM,* EP 747, slip op. at 4–6. The Board proposed to allow all filings (subject to the current limit of 100 megabytes or less)[3] to be e-filed, unless alternative filing procedures are required. The proposed rule would also require that any fees associated with e-filings be paid electronically.

The *NPRM* also proposed to modify the requirements for paper filers to reduce the burden on those filers. *NPRM,* EP 747, slip op. at 6–7. The Board proposed to eliminate the requirement to file 10 copies of paper filings in most proceedings and instead require paper filers generally to file only the original paper filing.[4] The proposed

[1] These status reports can both be accessed on the Board's website.

[2] As explained in more detail in the *NPRM,* these changes apply to the regulations as shown below, as well as to Board procedures related to payment, filings, and service.

[3] This current limitation is discussed later in the decision.

[4] The Board would reserve the right to require filers (both e-filers and paper filers) to provide paper copies of filings when necessary. The *NPRM*

changes would also eliminate the requirement that electronic versions of filings that are 20 or more pages in length be submitted on compact discs or 3.5-inch floppy diskettes. Instead, the proposed regulations would require filings that are 20 or more pages in length to be accompanied by electronic versions and would direct filers to the Board's website for information on how to provide those electronic versions. The *NPRM* also proposed to revise outdated format requirements regarding the submission of evidence or workpapers by directing filers to the Board's website for information on acceptable formats for such evidence.

The Board also proposed e-service of decisions. *NPRM,* EP 747, slip op. at 7–8. Parties who consent to e-service in a particular proceeding would be emailed decisions in that proceeding, instead of receiving paper service of Board decisions by mail.[5] The *NPRM* explained that e-filing by a party in a proceeding would constitute that party's consent to e-service. The Board's updated e-filing form would allow users to provide email address(es) to be used for e-service. *Id.* In addition, the NPRM explained that if a party makes a paper filing and includes an email address(es) on that filing, a letter would be sent informing that filer that such email address(es) would be used on the service list for that proceeding. The letter would explain that the filer may opt out of e-service via written notification to the Board or provide a different email address(es) for e-service. For proceedings that are open at the time these rules become effective, the Board proposed that a party's email address would be added to the e-service list if the party: (1) Utilizes e-filing or (2) does not opt out of e-service after making a paper filing that includes an email address. The proposal provided that paper service would continue for parties who do not consent to e-service in the manners discussed above.

The *NPRM* proposed to modify the charge for copying and printing tariffs, reports, and other public documents at 49 CFR 1002.1(d) at a rate of $0.25 per letter or legal size exposure, with a minimum charge of $7.50. *NPRM,* EP 747, slip op. at 8, 11. Also, the *NPRM* proposed making the first 100 pages of copying or printing under § 1002.1(d) free. *Id.* at 8. With respect to documents not considered public under the Board's Freedom of Information Act regulations, the *NPRM* proposed reducing the charge to $0.25 per letter or legal size exposure, with a minimum charge of $7.50 for copying and printing documents. *See* 49 CFR 1002.1(f)(7) below.

Lastly, the Board proposed minor updates to obsolete language, including addresses and telephone numbers. *See* 49 CFR 1012.2(a); 1012.3(b)(5); 1132.1; 1312.4.

Comments. As discussed below, the comments generally sought clarification and minor modifications concerning the proposed procedures.

NARPO asks whether electronic payments through *Pay.gov* include the option of electronic wire transfers. (NARPO Comments 1.) *Pay.gov* accepts the transfer of funds through bank accounts, which is a similar process to wire transfers.[6]

MacDougall notes the Board's goal of increased use of e-filing and states that the Board should not discourage filings made in other forms because filing entities may not be familiar with e-filing and/or email. (MacDougall Comments 2–3.) As proposed in the *NPRM,* the Board would encourage the use of e-filing but continue to accept paper filings at this time. To assist the public, the Board's website provides guidance regarding filing procedures. In addition, filers can contact Board staff by phone for filing assistance.

Next, MacDougall raises concerns that requiring paper filers to file only an original copy will negatively affect availability of filings to Board staff and the public. (*Id.* at 3.) MacDougall's concerns are misplaced. Board staff will continue to ensure that filings, whether e-filed or filed in paper, are promptly and appropriately distributed within the agency. Similarly, elimination of the paper copies requirement will not materially affect the timing of posting of new filings to the Board's website or availability for public examination. The Board strives to efficiently process both paper filings and e-filings, and generally filings are posted to the Board's website within one business day of submission.

Lastly, MacDougall suggests revising the Board's waiver and filing fee rules to include a grace period ''for honest mistakes in the submission of an incorrect fee.'' (*Id.* at 3–4.) The Board concludes that this modification is not necessary. Board staff is available for assistance with determining the correct fee prior to filing, and with correction of any errors discovered after filing.[7]

WCTL generally supports the Board's proposal, with certain caveats. Regarding the Board's proposal to remove outdated language at current 49 CFR 1104.3(b) (requiring the submission of workpapers in formats that are not commonly used today), WCTL recognizes that the format for electronic workpaper submission should be fluid, but it expresses concern that the Board has not provided details regarding the submission of electronic workpapers under 100 megabytes and instead has provided a placeholder in the proposed regulations that directs filers to the Board's website. (WCTL Comments 2.) WCTL suggests that the Board provide those details before finalizing changes to the existing rule. (*Id.* at 2, 10.) As stated in the *NPRM,* electronic workpapers under 100 megabytes may be submitted via e-filing and will be accepted by email, compact disc, or USB flash drive. *NPRM,* EP 747, slip op. at 5, 6 n.15. Guidance regarding acceptable software formats, which will be posted on the Board's website by the effective date of the new rule, will generally reflect current practices, and Board staff will be available to provide assistance. In rate reasonableness proceedings, files are typically submitted via hard drive or flash drive and those formats will continue to be acceptable.[8] The Board will continue to accept common electronic filing formats used by practitioners, and the Board will keep parties updated on improvements to its electronic systems, including updated versions of its word processing, database, and other software programs.

Next, WCTL supports the proposed expansion of e-filing but suggests that the Board should allow e-filings in excess of 100 megabytes by revising its systems or establishing a secondary system. (WCTL Comments 2, 8–9.) At this time, the Board must continue to limit the size of e-filings to 100 megabytes or less due to technical limitations in the agency's current e-filing system, which cannot support uploading larger files.[9] As the Board continues to work to improve its e-filing system, it will keep interested parties apprised of updates to technological capabilities that would allow the Board

also indicated that the Board would retain the current requirement regarding the number of paper copies in merger proceedings (49 CFR 1180.4).

[5] The *NPRM* explained that the Board would continue to serve paper copies of Board decisions as a backup to e-service during the early stages of e-service implementation. The Board expects that this transitional, dual-service period would last for up to three months after the effective date of this rule.

[6] For more information on acceptable methods of payment on *Pay.gov,* see *https://www.pay.gov/WebHelp/HTML/about.html,* and click on ''About Payments.''

[7] For assistance regarding filing and/or filing fees, please call (202) 245–0350.

[8] The Board notes that in rate reasonableness proceedings, workpaper formatting will continue to be governed on case-by-case basis pursuant to procedural orders in individual proceedings.

[9] The Board previously only accepted e-filings of up to 10 megabytes, but recently began accepting larger e-filings of up to 100 megabytes.

to accept e-filings larger than 100 megabytes.[10]

Lastly, WCTL suggests eliminating the requirement in current 49 CFR 1104.3(a), which states that ''[a]ppropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on the copies, will be accurately identified on all copies.'' (WCTL Comments 11.) WCTL states that the need to identify color on the original is unnecessary for almost all applications under the Board's proposal, and that this ''hold-over language'' ought to be eliminated. (*Id.*) The Board agrees that due to the increase in e-filing and the proposed elimination of paper filing copies in most instances, the need for this requirement may be reduced. However, because the requirement is not burdensome and would remain helpful in those instances where paper copies are filed, the adopted rules will retain that requirement, which will now be in 49 CFR 1104.3(b).

Updates to e-service procedures. The Board is modifying the e-service procedures described in the *NPRM* where the Board proposed, among other things, to mail letters to certain paper filers notifying them that they would receive e-service and did not propose to include a corresponding regulation. Under both the NPRM's proposed procedure and the new procedure, two groups of filers will be deemed to have consented to e-service: (1) E-filers, and (2) paper filers that include email contact information on their filing and do not opt out of e-service via written notification.[11] With respect to the latter category, and in a departure from the Board's original proposal, the Board will not send such paper filers a letter informing them that the email address(es) on the filing would be used on the service list. The Board is also adopting a new regulation at 49 CFR 1104.12, in which the Board describes these e-service procedures and specifies that paper filers that have not consented to e-service or that have opted out will be served by first-class mail. It is anticipated that the new regulation and procedures will increase participation in e-service and reduce the Board's costs.

The *NPRM* stated that, for proceedings that are open at the effective date of the rule, a party's email address would be added to the e-service list if the party: (1) Utilizes e-filing or (2) does not opt out of e-service after making a paper filing that includes an email address. Parties wishing to ensure that they receive e-service in open proceedings are encouraged to e-file a single letter listing all the docket(s) in which they would like to receive e-service.

Finally, the Board encourages anyone who anticipates receiving e-service from the Board to add the email addresses *eservice@stb.dot.gov* and *eservice@stb.gov* to their email contact information.[12] This will help prevent emails from those addresses being sent to junk mail folders.

Updates to additional regulations. In the *NPRM,* the Board proposed to no longer require that electronic versions of documents or pleadings be submitted on compact discs or 3.5-inch floppy diskettes. *NPRM,* slip op. at 6 (describing changes to section 1104.3(b)). For consistency with those changes, the final rule also removes outdated references to diskettes in additional regulations in 49 CFR parts 1150 and 1152, governing transactions that involve the creation of Class I or Class II rail carriers and procedures for abandonments or discontinuances of rail service. Specifically, the final rule eliminates the requirement that a copy of the draft **Federal Register** notice be submitted ''as data contained on a computer diskette.'' *See* 49 CFR 1152.22(i), 1152.60(c). Similarly, the final rule also removes this same language from the procedures governing applications for land-use-exemption permits at 49 CFR 1155.21(e).

Conclusion. The Board will adopt the rule modifications proposed in the *NPRM,* subject to the refinements noted above. The Board anticipates that the changes in this final rule will, among other things, significantly increase the percentage of electronic filings the agency receives, the use of electronic payment systems, and the efficiency of service of Board decisions. After implementation of this final rule, the Board will endeavor on an ongoing basis to improve its filing and information systems in ways that will add value to the public by monitoring the number of paper filings received, assessing the effectiveness of and participation in electronic service of decisions, and reviewing the technological limitations and functionality of the e-filing system.

Administrative Procedure Act and Regulatory Flexibility Act

As the Board stated in the *NPRM,* these revisions to the regulations are not subject to the provisions of the Administrative Procedure Act (APA) requiring notice and opportunity for public comment. *See* 5 U.S.C. 553(b)(3)(A). However, the proposed rules were published for notice and comment because the Board determined that it would be useful to do so. Regardless, because the Board determined that notice and comment were not required under the APA, the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, also do not apply.

It is ordered:

1. The Board adopts the final rule as set forth in this decision. Notice of the adopted rule will be published in the **Federal Register**.

2. This decision is effective on May 10, 2019.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common Carriers, Freedom of information.

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1110

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1113

Administrative practice and procedure.

49 CFR Part 1130

Administrative practice and procedure.

49 CFR Part 1132

Administrative practice and procedure.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and

[10] The Board's website will continue to provide guidance regarding filing procedures. Any updates to technological capabilities or increased filing sizes would be posted on the website, without additional regulatory changes.

[11] Those who wish to opt out may send written notification to the Board by mail or email at *MILSS@stb.gov.*

[12] Initially, service will be made from the *eservice@stb.dot.gov* address. That address will eventually be replaced with *eservice@stb.gov.*

recordkeeping requirements, Uniform System of Accounts.

49 CFR Part 1155

Administrative practice and procedure, Railroads, Waste treatment and disposal.

49 CFR Part 1182

Administrative practice and procedure, Motor carriers.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Pipelines, Railroads.

49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forests and forest products, Railroads.

Decided: March 22, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends parts 1002, 1012, 1104, 1110, 1111, 1113, 1130, 1132, 1150, 1152, 1155, 1182, 1244, 1312, and 1313 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 is revised to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.1 as follows:
■ a. In paragraph (c), remove the word ''identical'' and add in its place ''incidental'';
■ b. Revise paragraph (d);
■ c. In paragraph (e), remove ''Room 1200,'';
■ d. Remove paragraph (f) and redesignate paragraphs (g) through (i) as paragraphs (f) through (h);
■ e. Revise newly redesignated paragraph (f)(7);
■ f. Remove newly redesignated paragraph (f)(8) and redesignate paragraphs (f)(9) through (18) as (f)(8) through (17);
■ g. In newly redesignated paragraph (f)(14), remove ''(g)(15)'' and add ''(f)(14)'' in its place; and
■ h. Revise newly redesignated paragraph (g).

The revisions read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(d) Copies or computer printouts of tariffs, reports, and other public documents, at the rate of $.25 per letter or legal size exposure, only after the first 100 pages, with a minimum charge of $7.50. Copies of electronic records, audiovisual materials, or other forms of data are available at the actual cost of duplication or transcription.

* * * * *

(f) * * *

(7) The fee for copies or computer printouts shall be $.25 per letter or legal size exposure, with a minimum charge of $7.50. Copies of electronic records, audiovisual materials, or other forms of data are available at the actual cost of duplication or transcription.

* * * * *

(g) Fees for services described in paragraphs (a) through (f) of this section may be paid by check, money order, or through the Board's electronic payment system in accordance with § 1002.2(a)(2).

* * * * *

■ 3. Amend § 1002.2 as follows:
■ a. In paragraph (a)(1), remove the second sentence;
■ b. Remove paragraph (a)(2);
■ c. Redesignate paragraph (a)(3) as paragraph (a)(2);
■ d. Revise newly redesignated paragraph (a)(2); and
■ e. Revise paragraph (b).

The revisions read as follows:

§ 1002.2 Filing fees.

(a) * * *

(2) Filing fees for all e-filings must be paid via the Board's electronic payment system found on the Board's website. Filing fees for other filings may be paid via the electronic payment system, but will also be accepted payable to the Surface Transportation Board, either by check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, or by money order payable in United States currency.

(b) Any filing that is not accompanied by the appropriate filing fee or a request for waiver of the fee is deficient. If a filer requests a fee waiver but does not submit the appropriate fee, the filing is held for processing until a determination has been made on the fee waiver request. If the filer requests a fee waiver and submits the appropriate fee, the filing is accepted and the Board refunds the fee or a portion thereof if the fee waiver is ultimately granted.

* * * * *

PART 1012—MEETINGS OF THE BOARD

■ 4. The authority citation for part 1012 continues to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 1301, 1321.

§ 1012.2 [Amended]

■ 5. In § 1012.2(a), remove the words ''located at 1925 K Street, NW, Washington, DC''.

§ 1012.3 [Amended]

■ 6. In § 1012.3(b)(5), remove the second sentence.

■ 7. In § 1012.6, revise paragraph (a) to read as follows:

§ 1012.6 Petitions seeking to open or close a meeting.

(a) The Board will entertain petitions requesting either the opening of a meeting proposed to be closed to the public or the closing of a meeting proposed to be open to the public. In the case of a meeting of the Board, or a Division or committee of the Board, a petition shall be filed.

* * * * *

PART 1104—FILING WITH THE BOARD–COPIES–VERIFICATION–SERVICE–PLEADINGS, GENERALLY

■ 8. The authority citation for part 1104 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; and 49 U.S.C. 1321.

■ 9. In § 1104.1, revise paragraph (e) to read as follows:

§ 1104.1 Address, identification, and electronic filing option.

* * * * *

(e) Unless otherwise directed by the Board, persons filing pleadings and documents with the Board have the option of electronically filing (e-filing) pleadings and documents instead of filing paper copies. Details regarding file size limitations, permissible formats, procedures to be followed, acceptable signature formats, and other pertinent information are available on the Board's website, *www.stb.gov.* If the e-filing option is chosen, then the applicable requirements will be those specified on the Board's website, and any requirements of this part that specifically apply to filing of paper copies will not apply to the e-filed pleadings and documents (these requirements include, but are not limited to, stapling or binding specifications, signature ''in ink,'' etc.). Persons are not required to e-file and may continue to use the Board's processes for filing paper copies.

■ 10. Revise § 1104.3 to read as follows:

§ 1104.3 Paper filings, electronic submissions, and copies.

(a) The executed original of a paper pleading or document permitted or required to be filed under this subchapter, including correspondence, must be furnished for the use of the Board. Textual submissions of 20 or more pages must be accompanied by an electronic version. Details regarding electronic submissions, including evidence, workpapers, and other pertinent information are available on the Board's website, *www.stb.gov.*

(b) The Board may, at its discretion, request paper copies of a pleading, document, or paper filed or e-filed with the Board. Any such copies must be clear and legible. Appropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on copies, will be accurately identified on all copies.

■ 11. In § 1104.12, revise the section heading and add paragraph (d) following the parenthetical citation to read as follows:

§ 1104.12 Service of pleadings, papers, and decisions.

* * * * *

(d) *Service by the Board.* Service of decisions and other Board issuances as appropriate generally will be made by electronic means (e-service), except in the case of paper filers that have not consented to e-service, in which case service upon that recipient will be made by first-class mail. Paper filers that include email contact information on their filing and do not opt out of e-service via written notification will be deemed to have consented to e-service.

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

■ 12. The authority citation for part 1110 continues to read as follows:

Authority: 49 U.S.C. 1321.

■ 13. In § 1110.2, revise paragraph (c)(1) to read as follows:

§ 1110.2 Opening of proceeding.

* * * * *

(c) * * *

(1) Be submitted to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington DC;

* * * * *

§ 1110.6 [Amended]

■ 14. In § 1110.6(a), remove the phrase ''and one copy''.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 15. The authority citation for part 1111 continues to read as follows:

Authority: 49 U.S.C. 10704, 11701, and 1321.

■ 16. In § 1111.4, revise the sixth sentence and remove the seventh sentence to read as follows:

§ 1111.4 Service.

* * * The complaint should be filed with the Board together with an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service.

■ 17. In § 1111.5, revise paragraph (c) to read as follows:

§ 1111.5 Answers and cross complaints.

* * * * *

(c) *Time for filing; copies; service.* An answer must be filed with the Board within 20 days after the service of the complaint or within such additional time as the Board may provide. The defendant must serve copies of the answer upon the complainant and any other defendants.

* * * * *

PART 1113—ORAL HEARING

■ 18. The authority citation for part 1113 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 1321.

■ 19. In § 1113.7, revise paragraph (e) to read as follows:

§ 1113.7 Intervention; petitions.

* * * * *

(e) *Copies; service; replies.* When a petition for leave to intervene is tendered at the hearing, sufficient copies of the petition must be provided for distribution to the parties represented at the hearing. When a petition for leave to intervene is not tendered at the hearing, the petition should be submitted to the Board together with a certificate that service has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service of the petition to intervene. At the discretion of the Board, leave to intervene may be granted or denied before the expiration of the time allowed for replies.

* * * * *

■ 20. In § 1113.13, revise the section heading and remove the last sentence of the paragraph to read as follows:

§ 1113.13 Filing evidence subsequent to hearing.

* * * * *

PART 1130—INFORMAL COMPLAINTS

■ 21. The authority citation for part 1130 continues to read as follows:

Authority: 49 U.S.C. 1321, 13301(f), 14709.

■ 22. In § 1130.1, revise paragraph (a) to read as follows:

§ 1130.1 When no damages sought.

(a) *Form and content.* Informal complaint may be by letter or other writing filed with the Board and will be serially numbered as filed. The complaint must contain the essential elements of a formal complaint as specified at 49 CFR 1111.2 and may embrace supporting papers.

* * * * *

■ 23. In § 1130.2, revise the last sentence of paragraph (f) to read as follows:

§ 1130.2 When damages sought.

* * * * *

(f) * * * Any petition for reconsideration should be filed with the Board.

* * * * *

PART 1132—PROTESTS REQUESTING SUSPENSION AND INVESTIGATION OF COLLECTIVE RATEMAKING ACTIONS

■ 24. The authority citation for part 1132 continues to read as follows:

Authority: 49 U.S.C. 1321, 13301(f), and 13703.

■ 25. Amend § 1132.1 as follows:

■ a. Remove paragraph (c);

■ b. Redesignate paragraphs (d) and (e) as paragraphs (c) and (d);

■ c. Revise newly redesignated paragraph (c); and

■ d. Remove the second sentence of newly redesignated paragraph (d).

The revision reads as follows:

§ 1132.1 Protest against collective ratemaking actions.

* * * * *

(c) *Copies; service.* Every protest or reply filed under this section should be directed to the attention of the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. One copy of each protest or reply filed under this section simultaneously must be served upon the publishing carrier or collective ratemaking

organization, and upon other persons known by protestant to be interested.

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

■ 26. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 1321(a), 10502, 10901, and 10902.

§ 1150.10 [Amended]

■ 27. Amend § 1150.10 as follows:
■ a. In paragraph (b), remove the words ''The original and 10 copies of the application'' and add in their place ''An application'' and remove the words ''application shall include'' and add in their place ''application may include''; and
■ b. In paragraph (g), remove ''(with 10 copies)'' and remove ''49 CFR 1112.1 *et seq.*'' and add in its place ''49 CFR part 1112''.

§ 1150.16 [Amended]

■ 28. In § 1150.16, remove the reference to ''(plus three copies)''.

§ 1150.45 [Amended]

■ 29. In § 1150.45, remove the last sentence of paragraph (d).

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 30. The authority citation for part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 1301, 1321(a), 10502, 10903–10905, and 11161.

§ 1152.21 [Amended]

■ 31. In § 1152.21, in the Notice of Intent, remove the words ''The original and 10 copies of all comments or protests'' and add in their place ''Every comment or protest''.

§ 1152.22 [Amended]

■ 32. In § 1152.22(i):
■ a. Remove the second sentence of the introductory text; and
■ b. In the Notice of Application, remove the words ''The original and 10 copies of all comments or protests'' and add in their place ''Every comment or protest''.
■ 33. In § 1152.24, revise paragraph (a) to read as follows:

§ 1152.24 Filing and service of application.

(a) The application shall be filed with the Chief, Section of Administration, Office of Proceedings, Washington, DC 20423–0001. The application shall bear the date and signature and shall be complete in itself. The applicable filing fee must be paid by check, money order, or through the Board's electronic payment system (see 49 CFR part 1002). If the applicant carrier is in bankruptcy, the application shall also be filed on the bankruptcy court.

* * * * *

■ 34. Amend § 1152.25 as follows:
■ a. Remove paragraph (c)(2);
■ b. Redesignate paragraphs (c)(3) and (4) as paragraphs (c)(2) and (3).
■ c. Revise newly redesignated paragraph (c)(3); and
■ d. Revise paragraphs (e)(1)(iii), (e)(4) and (6), and (e)(7)(i).

The revisions read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

* * * * *

(c) * * *

(3) Replies or rebuttal to written comments and protests shall be filed and served by applicants no later than 60 days after the filing of the application.

* * * * *

(e) * * *

(1) * * *

(iii) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903 (and abandonment exemption proceedings), issued pursuant to delegations of authority at 49 CFR 1011.7(a)(2)(iv) and (v), will be acted on by the entire Board as set forth at 49 CFR 1011.2(a)(7). Any appeals, and replies to appeals, under this section must be filed with the Board.

* * * * *

(4) *Petitions to reopen administratively final actions.* A person may file with the Board a petition to reopen any administratively final action of the Board. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances.

* * * * *

(6) *Petitions to vacate.* In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.), the Board will entertain petitions to vacate the abandonment or discontinuance authorization. Any petitions to vacate must be filed with the Board.

(7) * * *

(i) The filing of a petition to reopen shall not stay the effect of a prior action. Any petition to stay must be filed with the Board.

* * * * *

■ 35. In § 1152.60(c), revise the note to the Draft **Federal Register** Notice to read as follows:

§ 1152.60 Special rules.

* * * * *

(c) * * *

Draft **Federal Register** Notice. The petitioner shall submit a draft notice of its petition to be published by the Board within 20 days of the petition's filing with the Board. The draft notice shall be in the form set forth below:

* * * * *

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

■ 36. The authority citation for part 1155 continues to read as follows:

Authority: 49 U.S.C. 1321(a), 10908, 10909, 10910.

§ 1155.21 [Amended]

■ 37. In § 1155.21(e), remove the second sentence.

§ 1155.23 [Amended]

■ 38. Amend § 1155.23 as follows:
■ a. In paragraph (c)(1), remove the second sentence;
■ b. In paragraph (c)(2), remove the second sentence; and
■ c. In paragraph (c)(3), remove the second sentence.

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS

■ 39. The authority citation for part 1182 continues to read as follows:

Authority: 5 U.S.C. 559; 21 U.S.C. 862; and 49 U.S.C. 13501, 13541(a), 13902(c), and 14303.

§ 1182.7 [Amended]

■ 40. In § 1182.7(e)(2), remove the words ''The original and 10 copies of the'' and add in their place ''The''.

§ 1182.8 [Amended]

■ 41. In § 1182.8(b), remove paragraph (b) and redesignate paragraphs (c) through (f) as paragraphs (b) through (e).

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 42. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 1321, 10707, 11144, 11145.

§ 1244.9 [Amended]

■ 43. Amend § 1244.9 as follows:

■ a. In paragraph (d)(3)(i), add the words ''with the Director, Office of Economics, Surface Transportation Board, Washington, DC,'' after ''shipper'';
■ b. Remove paragraph (d)(3)(ii) and redesignate paragraph (d)(3)(iii) as paragraph (d)(3)(ii);
■ c. In paragraph (e)(2), remove the words ''An original and 2 copies of the'' and add in their place ''The''; and
■ d. In paragraph (g)(3), remove the words ''An original and three (3) copies of the'' and add in their place ''The''.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

■ 44. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 1321(a), 13702(a), 13702(b) and 13702(d).

§ 1312.4 [Amended]

■ 45. Amend § 1312.4 as follows:
■ a. In paragraph (a)(1), remove ''1925 K Street, NW,'';
■ b. In paragraph (a)(2)(iii), remove the words ''enclosed, the account number to be billed, or the credit card to be charged;'' and add in their place ''method of payment (pursuant to 49 CFR 1002.2(a)); and'';
■ c. In paragraph (a)(2)(iv), remove ''; and'' and add in its place a period; and
■ d. Remove paragraph (a)(2)(v).

PART 1313—RAILROAD CONTRACTS FOR THE TRANSPORTATION OF AGRICULTURAL PRODUCTS

■ 46. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 1321(a) and 10709.

■ 47. In § 1313.4, revise paragraphs (a)(3)(iii) and (iv) and remove paragraph (a)(3)(v) to read as follows:

§ 1313.4 Filing procedures and formats for contract summaries.

(a) * * *
(3) * * *
(iii) The filing fee enclosed (pursuant to 49 CFR 1002.2(a)); and
(iv) The transmittal number if the filer utilizes transmittal numbers.
* * * * *

■ 48. In § 1313.10, revise paragraph (a)(7) and remove paragraph (a)(8)(v) to read as follows:

§ 1313.10 Procedures for complaints and discovery.

(a) * * *
(7) *Filings.* If a complaint, petition, or reply is filed in paper, it must be filed with the Board in a package marked ''Confidential Rail Contract Material''. If a complaint, petition, or reply is electronically filed, it must be designated as confidential in the Board's e-filing system.
* * * * *

[FR Doc. 2019–05831 Filed 4–2–19; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2019–0005; FXMB12610700000–190–FF07M01000]

RIN 1018–BD07

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2019 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2019 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. The proposed rule for the 2019 season was delayed, requiring this interim rule to allow subsistence hunting to begin in April. We will respond to public comments, and based on public comments received, may revise this interim rule.

DATES: This rule becomes effective on April 2, 2019. We will accept comments received or postmarked on or before May 3, 2019.

ADDRESSES: You may submit comments on this interim rule by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2019–0005.

• *U.S. mail or hand-delivery: Public Comments Processing, Attn:* FWS–R7–MB–2019–0005; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Place, MS: BPHC; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments Solicited and Public Availability of Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Eric J. Taylor, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3446.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public. To ensure that any action resulting from this interim rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this interim rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation used in preparing this interim rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* Search for FWS–R7–MB–2019–0005, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1714.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2019. This rule also sets forth a list of migratory bird season openings and closures in Alaska by region.

Need for Interim Rule

To meet the April 2, 2019, opening season for Alaska subsistence harvest of migratory game birds, we are publishing an interim rule. We were not able to publish a proposed rule in 2019 due to unforeseen time constraints. We have engaged with stakeholders and they are understanding of this circumstance. We are providing an opportunity for public comment (30 days) with this interim rule (see **DATES**, above). This will help ensure that if we receive any public comments that we could propose those changes in the 2020 spring and summer subsistence harvest rule.

Our February 1, 2018, proposed rule (83 FR 4623) provided the public the opportunity to comment on the provisions in this interim rule. For subpart D of part 92 in title 50 of the Code of Federal Regulations (50 CFR part 92, subpart D), the provisions in this interim rule are the same as those set forth in our March 30, 2018, final rule (83 FR 13684); the amendments in the March 30, 2018, final rule to 50 CFR part 92, subpart C do not need to be readopted here. The March 30, 2018, final rule is the most recent Alaska migratory bird subsistence harvest final rule, and the public is familiar with it, having already commented on it. The public, having commented on the 2018 final rule and other previous final rules, also had an opportunity to comment on the substance of the current interim rule. We also addressed the three relevant comments received in the 2018 final rule. Furthermore, these Alaska subsistence harvest regulations have generally been similar the past several years, and with no significant controversy from the public. We do not intend to use an interim rule again for this purpose, as doing so prevents modifications to the regulations implemented in consultation with the Alaskan communities. We regret any confusion that this deviation from the normal rulemaking process may cause. In future Alaska migratory bird subsistence harvest rulemaking actions, we expect to have a proposed rule earlier in the process to ensure meeting the April 2 opening date for the season.

Again, it would not be possible for us to publish a proposed rule, with a 30-day comment period, and then publish a final rule, by April 2. Therefore, without this interim rule, the subsistence hunting of migratory birds in Alaska during the normal season, which begins on April 2 each year, would be in violation of the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712). To respect the subsistence hunt of many rural Alaskans, either for their cultural or religious exercise, sustenance, and/or materials for cultural use (*e.g.,* handicrafts), the Department of the Interior finds that it is in the public interest to publish this interim rule. Under 5 U.S.C. 553(b), the Administrative Procedure Act allows an agency to make a rule effective without a proposed rule for good cause if ''contrary to the public interest.'' We find that the delay associated with public comment on a proposed rule to open the Alaska migratory bird subsistence harvest by April 2 is contrary to the public interest, and therefore the ''good cause'' exception under 5 U.S.C. 553(b) applies.

In addition, we have good cause to waive the standard 30-day effective date for this interim rule consistent with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this rule will, therefore, take effect on April 2, 2019. This rule relieves a restriction, as just described. Delaying the effective date for 30 days would have detrimental effects on Alaskans seeking to conduct subsistence harvest during the season that begins April 2, 2019, and on the businesses that support this activity.

While we are taking these steps to ensure Alaskan subsistence hunters do not violate the MBTA, we invite public comment as described above in **DATES** and **ADDRESSES**. Following our consideration of the comments received, we will respond to public comments, and based on public comments received, may revise this interim rule.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, were originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on March 30, 2018 (83 FR 13684).

Recent **Federal Register** documents and all final rules setting forth the annual harvest regulations are available at *http://www.fws.gov/alaska/ambcc/regulations.htm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service is establishing migratory bird subsistence-harvest regulations in Alaska for the 2019 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

The Alaska Migratory Bird Co-management Council (Co-management Council) did not hold its annual spring meeting in 2018 due to budget constraints. The Co-management Council did consider two proposals to administratively correct two aspects of the closed season in the Yukon/Kuskokwim Delta region in the 2019 regulations, and voted to approve these via teleconference and email. These proposals will be included in next year's rulemaking.

This Interim Rule

This interim rule contains no changes from the final regulation amendments published on March 30, 2018 (83 FR 13684), for 50 CFR part 92, subpart D.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. The most populated portions of Alaska such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, the town of Kodiak, and Southeast Alaska were excluded from eligible subsistence harvest areas.

In response to petitions requesting inclusion in the harvest in 2004, we added 13 additional communities consistent with the criteria set forth at 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only in response to petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, according to the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and the hunting of waterfowl during spring. This request resulted in a new, limited harvest of spring waterfowl and gull eggs starting in 2014.

How will the service ensure that the subsistence migratory bird harvest complies with the migratory bird treaty act, and will not threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for more than 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta.

Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this rule will provide for the preservation and maintenance of migratory bird stocks as required by the MBTA. The MBTA's 16 U.S.C. 712(1) provision states that the Service, ''is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.'' Communication and coordination between the Service, the Co-management Council, and the Pacific Flyway Council have allowed us to set harvest regulations to ensure the long-term viability of the migratory bird stocks. In addition, Alaska migratory bird subsistence harvest rates have continued to decline since the inception of the subsistence-harvest program, reducing concerns about the program's consistency with the preservation and maintenance of stocks of migratory birds.

As for the ensuring the conservation of species listed under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species are taken in several regions of Alaska. We have determined that this rule complies with the ESA (see *Endangered Species Act Consideration* discussion, below).

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that: (1) Regulations continue to protect threatened species; (2) measures to address documented threats are implemented; and (3) the subsistence community and other conservation partners commit to working together. With these objectives in mind, the Service, working with North Slope partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; and (2) continued enforcement of the migratory bird regulations that are protective of listed eiders.

This rule continues to focus on the North Slope from Utqiagvik (formerly known as Barrow) to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there, and harvest survey data and direct observations indicate take during subsistence harvest has occurred there. These regulations are designed to address several ongoing eider-management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure will be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species while providing subsistence hunters an opportunity to maintain the culture and traditional migratory bird harvest of the community. These regulations pertaining to bag checks and possession of illegal birds are deemed necessary to monitor take of closed eider species during the subsistence hunt.

In collaboration with North Slope partners, a number of conservation efforts have been implemented to raise awareness and educate hunters in and around Utqiagvik on Steller's eider conservation via the local bird outreach festival, meetings, radio shows, signs, school visits, and one-on-one contacts. Limited intermittent monitoring on the North Slope, focused primarily at Utqiagvik, found no evidence that listed eiders were shot in 2009 through 2012; one Steller's eider and one spectacled eider were found shot during the summer of 2013; one Steller's eider was found shot in 2014; and no listed eiders

were found shot in 2015 through 2018. Elsewhere in Alaska, one spectacled eider that appeared to have been shot was found dead on the Yukon-Kuskokwim Delta in 2015.

The Service notes that progress is being made with the other eider conservation measures, including partnering with the North Slope Migratory Bird Task Force, for increased waterfowl-hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. However, Service staff have documented significant availability of lead shot in waterfowl rounds for sale in communities on the Yukon-Kuskokwim Delta and North Slope. Mortality, sickness, and poisoning from lead exposure have been documented in many waterfowl species, including threatened spectacled and Steller's eiders.

Lead shot has been banned nationally for waterfowl hunting since 1991, and this ban is further supported by local bans proposed by the North Slope Borough Fish and Wildlife Management Committee and the Association of Village Council Presidents—Waterfowl Conservation Committee since 2006 and 2007, respectively. The Service will work with partners and to increase our education, outreach, and enforcement efforts to ensure these bans are effective, and that subsistence waterfowl hunting is conducted using nontoxic shot.

The longstanding general emergency-closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulations at 50 CFR 92.32, carried over from the past 8 years, clarify that we would take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. When and if mortality of threatened eiders is documented, we would evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We would consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we would design it to minimize its impact on the subsistence harvest.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to ''review other programs administered by him (or her) and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . . '' We conducted an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this interim rule. The consultation was completed with a biological opinion that concluded the interim rule and conservation measures are not likely to jeopardize the continued existence of Steller's and spectacled eiders or result in the destruction or adverse modification of designated critical habitat. Based on comments submitted, we may confirm this finding in our future notice responding to public comments.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because this rule establishes annual harvest limits related to routine hunting or fishing.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed.

Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of $100 million or more. It legalizes and regulates a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that will be regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, will not have an impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It will not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska would be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule will not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this rule on the State of Alaska in the *Unfunded Mandates Reform Act* section, above. We worked with the State of Alaska to develop these regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we are evaluating possible effects on Federally recognized Indian tribes. The provisions in this Interim Rule are the same as those set forth in last year's final Rule, where we consulted with the tribes. This rule-making process is collaborative with the Tribes, and we will continue to consult with the Tribes as we affirm the Interim Rule.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with voluntary annual household surveys used to determine levels of subsistence take and assigned OMB Control No. 1018–0124 (expires 10/31/2019). You may view the information collection requirements at *http://www.reginfo.gov/public/do/PRAMain.* We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The annual regulations and options are considered in an October 2018 environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2019 Spring/Summer Harvest.'' Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 2. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2019 season dates for the eligible subsistence-harvest areas are as follows:

(a) *Aleutian/Pribilof Islands region.* (1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleutian Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in Game Management Units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta region.* (1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay region.* (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound region.* (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic region.* (1) Season: April 2–June 14 and July 16–August 31 (hunting in general); waterfowl egg gathering April 2–June 14 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 15 only.

(2) Closure: June 15–July 15, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope region.* (1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subparts C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior region.* (1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River region* (Harvest Area: Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Game Management Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska region.* (1) Prince William Sound Area West (Harvest area: Game Management Unit 6[D]), (Eligible

Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Game Management Units 6[B]and [C]—Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova, Tatitlek, and Chenega Bay):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: Greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U.S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Game Management Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Game Management Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.* (1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR part 100.3(a)):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay):

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 3. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: March 27, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–06585 Filed 4–1–19; 4:15 pm]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XG935

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2019 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 29, 2019, through 1200 hours, A.l.t., May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2019 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 848 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the GOA (84 FR 9416, March 14, 2019). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the B seasonal apportionment for Statistical Area 610 by 54 mt to account for the underharvest of the TAC in Statistical Area 630 in the A season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised B seasonal apportionment of pollock TAC in Statistical Area 610 is 902 mt (848 mt plus 54 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has

determined that the B season allowance of the 2019 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 802 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 28, 2019.

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

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

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

Dated: March 29, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–06496 Filed 3–29–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 64
Wednesday, April 3, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1630

Privacy Act: Proposed Exemptions

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (the Act), the Federal Retirement Thrift Investment Board (FRTIB) proposes to exempt four systems of records from certain requirements of the Act. FRTIB has previously published Systems of Records Notices (SORNs) for these systems.

DATES: Comments on this notice must be received by May 3, 2019.

ADDRESSES: You may submit written comments to FRTIB through the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Email: privacy@tsp.gov.*
- *Fax:* 202–942–1676.
- *Mail or Hand Delivery:* Office of General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Marla Greenberg, Chief Privacy Officer, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE, Suite 1000, Washington, DC 20002, 202–942–1600, *privacy@tsp.gov.*

SUPPLEMENTARY INFORMATION: FRTIB proposes to revise its Privacy Act regulations at 5 CFR part 1630 to exempt one of its systems of records, FRTIB–13, from certain requirements of the Privacy Act, 5 U.S.C. 552a. Under the Privacy Act, individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Privacy Act permits certain types of systems to be exempt from some of the Privacy Act requirements. Subsection (k)(2) of the Privacy Act authorizes the head of an agency to exempt a system of records from the applicable subsections if investigatory records are compiled for law enforcement purposes, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

As indicated in the Agency's accompanying Privacy Act system of records notices amending FRTIB–13, this system contains information compiled by the Agency in the course of carrying out its fiduciary duties to detect and prevent fraudulent activity against participant accounts. FRTIB's fraud and forgery records fall under the exemption stated within subsection (k)(2) of the Privacy Act because these records are compiled for law enforcement purposes. FRTIB proposes to exempt eligible records contained within FRTIB–13 from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f), which require agencies to provide an accounting of disclosures; provide notification, access, and amendment rights, rules, and procedures; maintain only relevant and necessary information; and identify categories of record sources. Exempting records from this system is necessary and appropriate to maintain the integrity of FRTIB's investigations into allegations of fraud or forgery and to ensure that FRTIB's efforts to obtain accurate and objective information will be successful. FRTIB has previously published a SORN for this system in the **Federal Register**. 81 FR 7106, 7111 (Feb. 10, 2016). To the extent that FRTIB uses investigatory material within this system of records as a basis for denying an individual any right, privilege, or benefit to which an individual would be entitled in the absence of that record, FRTIB will grant that individual access to the material except to the extent that access would reveal the identity of a source promised confidentiality.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k). Where FRTIB determines compliance would not appear to interfere with or adversely affect the purpose of this system to investigate and prevent fraud, the applicable exemption may be waived by FRTIB in its sole discretion, Exemptions from the particular subsections are necessary and appropriate, and justified for the following reasons:

- *5 U.S.C. 552(a)(c)(3) (the requirement to provide accountings of disclosures) and 5 U.S.C. 552a(d)(1)–(4) (requirements addressing notification, access, and amendment rights, collectively referred to herein as access requirements).* Providing individuals with notification, access, and amendment rights with respect to allegations and investigations into fraud against participant accounts could reveal the existence of an investigation; investigative interest; investigative techniques; details about an investigation; security-sensitive information such as information about security measures and security vulnerabilities; information that must remain non-public to protect personal privacy-identities of law enforcement personnel; or other sensitive or privacy-protected information. Revealing such information to individuals would compromise or otherwise impede pending and future law enforcement investigations and efforts to protect sensitive information. Revealing such information would also violate personal privacy. Additionally, revealing this information would enable individuals to evade detection and apprehension by security and law enforcement personnel; destroy, conceal, or tamper with evidence or fabricate testimony; or harass, intimidate, harm, coerce, or retaliate against witnesses, complainants, investigators, security personnel, law enforcement personnel, or their family members, their employees, or other individuals. With respect to investigatory material compiled for law enforcement purposes, the exemption pursuant to 5 U.S.C. 552a(k)(2) from access requirements in subsection (d) of the Act is statutorily limited. If any individual is denied a right, privilege, or benefit to which the individual would otherwise be entitled by Federal law or for which the individual would otherwise be eligible, access will be granted, except to the extent that the disclosure would reveal the identity of a source who furnished the information to the Government under an express promise of confidentiality.
- *5 U.S.C. 552a(e)(1) (the requirement to maintain only relevant and necessary*

information authorized by statute or Executive Order). It will not always be possible to determine at the time information is received or compiled in this system of records whether the information is or will be relevant and necessary to a law enforcement investigation. For example, a tip or lead that does not appear relevant or necessary when combined with other information that reveals a pattern or that comes to light later.

• *5 U.S.C. 552a(e)(4)(G) and (H) (the requirements to describe procedures by which subjects may be notified of whether the system of records contains records about them and seek access or amendment of a record).* These requirements concern individual access to records, and the records are exempt under subsections (c) and (d) of the Act, as described above. To the extent that subsection (e)(4)(G) and (H) are interpreted to require the Agency to promulgate more detailed procedures regarding record notification, access, or amendment than have been published in the **Federal Register**, exemption from those provisions is necessary for the same rationale as applies to subsections (c) and (d).

• *5 U.S.C. 552a(e)(4)(I) (the requirement to describe the categories of record sources).* To the extent that this subsection is interpreted to require a more detailed description regarding the record sources in this system than has been published in the **Federal Register**, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to FRTIB or as part of the Thrift Savings Plan (TSP). Further, because records used to investigate and prosecute allegations of fraud and forgery against participant accounts could come from any source, it is not possible to know every category in advance in order to list them all in FRTIB's accompanying SORN. Some record source categories may not be appropriate to make public in the SORN if, for example, revealing them could enable individuals to discover investigative techniques and devise ways to bypass them to evade detection and apprehension.

• *5 U.S.C. 552a(f) (the requirement to promulgate rules to implement provisions of the Privacy Act).* To the extent that this subsection is interpreted to require agency rules addressing the aforementioned exempted requirements, exemption from this provision is also necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to FRTIB or as part of the TSP.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501 1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

List of Subjects in 5 CFR Part 1630

Privacy.

Accordingly, FRTIB proposes to revise 5 CFR part 1630 as follows:

PART 1630—PRIVACY ACT REGULATIONS

■ 1. The authority citation for Part 1630 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Amend § 1630.15 by revising paragraph (b) to read as follows:

§ 1630.15 Exemptions.

* * * * *

(b) Those designated systems of records which are exempt from the requirements of sections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, 5 U.S.C. 552a, include FRTIB–13, Fraud and Forgery Records.

Dated: March 21, 2019.

Ravindra Deo,

Executive Director.

[FR Doc. 2019–06166 Filed 4–2–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. APHIS–2017–0105]

RIN 0579–AE43

Evaluation and Recognition of the Animal Health Status of Compartments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish standards to allow us to recognize compartments for animal disease status, consistent with World Organization for Animal Health international standards. Under this proposed rule, when a foreign government submits a request for recognition of a compartment, we would conduct a disease risk assessment based on a list of eight factors that closely parallel those we use when conducting regionalization evaluations, and we would provide for public notice of and comment on the risk assessment. We would also add provisions for imposing import restrictions and/or prohibitions when a compartment we have recognized as disease-free experiences an outbreak and for lifting those sanctions once the outbreak has been controlled. These proposed standards would provide a tool that may be used to preserve international trade when regionalization is not feasible.

DATES: We will consider all comments that we receive on or before June 3, 2019.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0105.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0105, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0105* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you,

please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Rochette, Staff Officer, Regionalization Evaluation Services, Strategy and Policy, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7276; *lisa.t.rochette@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, ''Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions'' (referred to below as the regulations), set forth the process by which a foreign government may request recognition of the animal health status of a region. These regulations require that such requests be accompanied by information regarding the region that will enable the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture to evaluate the request.

In order to conduct a valid evaluation of a region's animal health status and any risk that may be associated with the action requested, it is important that APHIS have complete and pertinent information regarding the region, its disease history, its animal health practices and capabilities, and any effect its import practices or relationship to adjacent regions might have on disease risk. Using information provided by the government of requesting country or region, information obtained on site visits, and publically available information, we base our evaluations on our assessment of the following eight factors:

- Scope of the evaluation being requested;
- Veterinary control and oversight;
- Disease history and vaccination practices;
- Livestock demographics and traceability;
- Epidemiological separation from potential sources of infection;
- Diagnostic laboratory capabilities;
- Surveillance practices; and
- Emergency preparedness and response.

When regionalization is not feasible, compartmentalization is a tool that may be used to preserve trade. Compartmentalization is a procedure that a country may implement to define and manage animal subpopulations of distinct health status and under common biosecurity management within its territory, in accordance with the guidelines in the World Organization for Animal Health (OIE) Terrestrial Animal Health Code, for the purpose of disease control and international trade. Compartmentalization is distinct from regionalization, which involves the recognition of geographical zones of a country that can be identified and characterized by their level of risk for different diseases, but the two are not mutually exclusive.

While APHIS recently established domestic compartmentalization for primary poultry breeders under the National Poultry Improvement Plan, the regulations in part 92 do not provide standards for the recognition of compartments in countries or regions wishing to export live animals or animal products to the United States. Such standards are necessary to enable us to use compartmentalization as another tool, along with regionalization, to minimize trade disruptions in the event of a disease outbreak. We are therefore proposing to add requirements for the recognition of compartments for animal disease status to the regulations. The proposed requirements, which would closely track the existing ones for recognizing regions, would include a list of eight factors on which we would base our evaluations of the compartments and would provide for a process that would allow the public to review and comment on our risk documentation prior to our making a final determination on the status of a compartment under consideration. We would also provide for the imposition of restrictions and/or prohibitions when a compartment we have recognized as disease-free experiences an outbreak and for their removal once the outbreak has been controlled.

Adding such a process to the regulations would necessitate revising the current heading for 9 CFR part 92, which only covers regions. The revised heading would include a reference to compartments.

The existing regulations do not define *compartment.* We propose to add a definition of *compartment* to § 92.1 to read as follows: Any defined animal subpopulation contained in one or more establishments under a common biosecurity management system for which surveillance, control, and biosecurity measures have been applied with respect to a specific disease. The proposed definition is in keeping with the description of compartmentalization provided above.

Current § 92.2 contains requirements for recognition of a region for disease status. Paragraph (a) contains general procedures for a foreign government or APHIS to follow when initiating a request for such recognition. Paragraph (b) lists the information the requesting government is required to provide in order for APHIS to conduct the evaluation. Paragraph (c) lists the information required to support a request for APHIS to conduct an evaluation in order to recognize a foreign region as historically free of a disease. Paragraph (d) directs the reader to the lists maintained on the APHIS website of countries' and regions' disease statuses. Paragraphs (e) and (f) describe the process APHIS employs to allow the public to comment on its evaluations. Paragraph (g) states that if a region's request is granted, the region may still be required to submit additional information or allow APHIS to engage in additional information-gathering activities.

Since proposed § 92.2 would apply to compartments as well as regions, we would revise the section heading and several paragraphs that currently refer only to regions by adding references to compartments as well. We would revise paragraph (a) in this manner, thereby indicating that the general procedures for initiating a market request would apply for compartments as well as for regions. We would also update the address to which foreign governments would submit their requests for recognition of regional or compartmental disease status.

Paragraphs (b) and (c) would continue to apply only to regions. We are not proposing to make any substantive changes to those paragraphs. However, we are proposing to redesignate current paragraphs (d), (e), (f), and (g) as paragraphs (e), (g), (h), and (i), respectively, and add new paragraphs (d) and (f).

In new paragraph (d), we are proposing to list the factors on which we would base our evaluation of a compartment for disease status. As is the case for regions, the requesting government would need to submit information, in English, that APHIS would use to assess the compartment on each factor. The proposed paragraph would also provide a hyperlink and a mailing address for the foreign government to use to obtain more detailed information regarding the specific types of data that will enable APHIS to most expeditiously conduct an evaluation of the request. The factors we would evaluate are:

- Scope of the evaluation being requested;
- Veterinary control and oversight of the compartment;
- Disease history and vaccination practices;
- Livestock or poultry commodity movement and traceability;

- Epidemiologic separation of the compartment from potential sources of infection;
- Surveillance;
- Diagnostic laboratory capabilities; and
- Emergency preparedness and response.

With one exception, which will be discussed in detail below, these eight proposed factors very closely parallel the existing ones for recognition of regions listed in current paragraphs (b)(1) through (8). We would, however, specifically reference compartments in proposed paragraphs (d)(2) and (5), respectively, which would consist of the second and fifth bulleted items above.

Current paragraph (b)(4) requires the national government(s) requesting an evaluation of a region for disease status to submit information to APHIS regarding livestock demographics and traceability in the region. We do not believe that by simply incorporating the language from that paragraph, we could necessarily obtain the information we need in relation to compartments. Instead, proposed paragraph (d)(4) would require the submission of information on livestock or poultry commodity movement and traceability into, within, and out of the compartment, paying particular attention to protocols that must be followed at each of these phases to allow for such movements. That information would aid us in determining how the compartment under consideration would keep its animal population separate from the rest of the animal population in the country or region within which the compartment exists. Unlike current paragraph (b)(4), proposed paragraph (d)(4) would not refer to livestock demographics, a factor that the limited scope of compartmentalization risk assessments would render largely irrelevant. In most cases, the compartment we would be evaluating would comprise a set of vertically integrated farm(s), feedmill(s), and other production sites (*e.g.,* hatcheries) encompassing one species, along with associated commercial outputs managed by one company. The compartmentalized animal subpopulation/species would be distinct from the livestock population outside of the compartment.

In new paragraph (f), we propose to state that a list of countries that have requested an APHIS compartmentalization evaluation, and a description of the requested compartment(s), would be available in a document posted to: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.* This proposed paragraph is similar to current paragraph (d) (which would be redesignated as paragraph (e)), which pertains to the information we would make available to the public on regions requesting a status evaluation.

Current paragraph (g) (which would be redesignated as paragraph (i)) states that if a region is granted animal health status under the provisions of this section, that region may be required to submit additional information pertaining to its animal health status or allow APHIS to conduct additional information-gathering activities in order for that region to maintain its animal health status. Under this proposed rule, the provision would apply to compartments as well; therefore, we would revise the paragraph by adding references to compartments where appropriate.

Current § 94.4 contains requirements for interim disease status designations, *i.e.,* the imposition of importation restrictions and/or prohibitions when there is a disease outbreak in a region we have previously recognized as free of a disease, for a subsequent reassessment by APHIS of the region's status, and for the reestablishment of its previous disease-free status when the outbreak has been controlled and the prohibitions or restrictions are no longer needed. As indicated in § 92.4(a), when such an outbreak occurs, APHIS will take immediate action to prohibit or restrict imports from the entire region or, if appropriate, a portion of it, will assign an interim disease-status designation to the region or portion thereof, and will notify the public of the status change via a notice in the **Federal Register**. As stated in § 92.4(b), APHIS may subsequently conduct a reassessment of the disease situation in the region. Prior to taking any action to relieve the prohibitions or restrictions we have imposed, we will make information regarding our reassessment of the region's disease status available to the public for comment via a notice in the **Federal Register**. Paragraph (c) states that based on the findings of our reassessment and the comments we receive on the initial notice, we may publish a second notice in the **Federal Register** announcing our determination or, if needed, another document in the **Federal Register** requesting additional comments.

Since the proposed requirements in § 92.4 would apply to entire regions, portions of regions, and compartments, we would add references to compartments, as appropriate, throughout the section.

Miscellaneous

In current § 92.2 paragraphs (a), (b), (c), and (d), there are mailing addresses and/or URLs that are outdated. We would update that information. In addition, as explained previously, our proposed additions of new paragraphs (d) and (f) to § 92.2 necessitate the redesignation of current paragraphs (d), (e), (f), and (g) as paragraphs (e), (g), (h), and (i), respectively. In newly redesignated paragraph (e), we would make an editorial change to eliminate possible confusion about who may make a request for evaluation of disease status. In newly redesignated paragraph (g), we would revise references to other paragraphs in § 92.2 to reflect the redesignations.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action is intended to minimize trade disruptions and could thereby provide benefits to producers and consumers.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

We are proposing to establish standards to allow us to recognize compartments for animal disease status, consistent with OIE international standards. This proposed rule would add compartmentalization as an option for evaluating disease status, but would not propose a specific implementation of this option.

The potential economic effects of imports based on a compartmentalization approach would depend on the disease status evaluation specific to the particular commodity and facility and the expected volume of the commodity that would be imported under this option. Under this proposed rule, we would perform a risk analysis

to evaluate the animal health status of a compartment, as we currently do when evaluating regions. If after conducting the evaluation, we deemed the risk of importing animals or animal products from that compartment in accordance with the regulations to be acceptable, we would publish a notice in the **Federal Register** announcing the availability of the risk documentation for public review and comment.

Because this proposed rule would not include the implementation of any specific compartmentalization decisions, there are no costs or cost savings that would directly result from this action. Gains could be realized when compartmentalization is implemented, however, because it may serve as a means of minimizing trade disruptions.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule have already been approved by the Office of Management and Budget under control number 0579–0040.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Incorporation by reference, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS AND COMPARTMENTS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. The heading of part 92 is revised to read as set forth above.

■ 3. Section 92.1 is amended by adding in alphabetical order a definition of *Compartment* to read as follows:

§ 92.1 Definitions.

* * * * *

Compartment. Any defined animal subpopulation contained in one or more establishments under a common biosecurity management system for which surveillance, control, and biosecurity measures have been applied with respect to a specific disease.

* * * * *

■ 4. Section 92.2 is revised to read as follows:

§ 92.2 Application for recognition of the animal health status of a region or a compartment.

(a) The representative of the national government(s) of any country or countries who has the authority to make such a request may request that APHIS recognize the animal health status of a region or a compartment.[1] Such requests must be made in English and must be sent to the Administrator, c/o Strategy and Policy, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. (Where possible, include a copy of the request and accompanying information in electronic format.)

(b) Requests for recognition of the animal health status of a region, other than requests submitted in accordance with paragraph (c) of this section, must include, in English, the following information about the region. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director, Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight.

(3) Disease history and vaccination practices.

(4) Livestock demographics and traceability.

(5) Epidemiological separation from potential sources of infection.

(6) Surveillance.

(7) Diagnostic laboratory capabilities.

(8) Emergency preparedness and response.

(c) Requests for recognition that a region is historically free of a disease based on the amount of time that has elapsed since the disease last occurred in a region, if it has ever occurred, must include, in English, the following information about the region. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director, Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737. For a region to be considered historically free of a disease, the disease must not have been reported in domestic livestock for at least the past 25 years and must not have been reported in wildlife for at least the past 10 years.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight.

(3) Disease history and vaccination practices.

(4) Disease notification.

(5) Disease detection.

(6) Barriers to disease introduction.

(d) Requests for recognition of the animal health status of a compartment must include, in English, the following information about the compartment. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director,

[1] Additionally, APHIS may choose to initiate an evaluation of the animal health status of a foreign region or compartment on its own initiative. In such cases, APHIS will follow the same evaluation and notification procedures set forth in this section.

Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight of the compartment.

(3) Disease history and vaccination practices.

(4) Livestock or poultry commodity movement and traceability.

(5) Epidemiologic separation of the compartment from potential sources of infection.

(6) Surveillance.

(7) Diagnostic laboratory capabilities.

(8) Emergency preparedness and response.

(e) A list of those regions for which an APHIS recognition of their animal health status has been requested, the disease(s) under evaluation, and, if available, the animal(s) or product(s) the region wishes to export, is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.*

(f) A list of countries that have requested an APHIS compartmentalization evaluation, and a description of the requested compartment is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.*

(g) If, after review and evaluation of the information submitted in accordance with paragraph (b), (c), or (d) of this section, APHIS believes the request can be safely granted, APHIS will indicate its intent and make its evaluation available for public comment through a document published in the **Federal Register**.

(h) APHIS will provide a period of time during which the public may comment on its evaluation. During the comment period, the public will have access to the information upon which APHIS based its evaluation, as well as the evaluation itself. Once APHIS has reviewed all comments received, it will make a final determination regarding the request and will publish that determination in the **Federal Register**.

(i) If a region or compartment is granted animal health status under the provisions of this section, the representative of the national government(s) of any country or countries who has the authority to make a regionalization or compartmentalization request may be required to submit additional information pertaining to animal health status or allow APHIS to conduct additional information collection activities in order for that region or compartment to maintain its animal health status.

(Approved by the Office of Management and Budget under control number 0579–0040)

■ 5. Section 92.4 is revised to read as follows:

§ 92.4 Reestablishment of a region or compartment's disease-free status.

This section applies to regions or compartments that are designated under this subchapter as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region or a compartment recognized as free of a specified animal disease in this subchapter experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from the entire region, a portion of that region, or the compartment. APHIS will inform the public as soon as possible of the prohibitions and restrictions by means of a notice in the **Federal Register**.

(b) *Reassessment of the disease situation.* (1) Following removal of disease-free status from all or part of a region or a compartment, APHIS may reassess the disease situation in that region or compartment to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing disease status, APHIS will take into consideration the standards of the World Organization for Animal Health (OIE) for reinstatement of disease-free status, as well as all relevant information obtained through public comments or collected by or submitted to APHIS through other means.

(2) Prior to taking any action to relieve prohibitions or restrictions, APHIS will make information regarding its reassessment of the region's or compartment's disease status available to the public for comment. APHIS will announce the availability of this information by means of a notice in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a notice in the **Federal Register** of its decision to reinstate the disease-free status of the region, portion of the region, or compartment;

(2) Publish a notice in the **Federal Register** of its decision to continue the prohibitions or restrictions on the imports of animals and animal products from that region or compartment; or

(3) Publish another document in the **Federal Register** for comment.

Done in Washington, DC, this 28th day of March 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–06473 Filed 4–2–19; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, and 621

RIN 3052–AD09

Criteria To Reinstate Non-Accrual Loans

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes amending existing regulations governing how the Farm Credit System (System) classifies high-risk loans to improve the loan classification and reinstatement process. The proposed rule would clarify the factors considered when categorizing high-risk loans and placing them in nonaccrual status. The rule would also revise both the reinstatement criteria and its application to certain loans in nonaccrual status to distinguish between the types of risk that led to a loan being placed in nonaccrual status.

DATES: You may send us comments on or before June 3, 2019.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov*.
- *FCA Website: http://www.fca.gov*. Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our website at *http://www.fca.gov*. Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, Senior Accountant, Office of Regulatory Policy, (703) 883–4223, TTY (703) 883–4056.

Legal information: Laura McFarland, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the proposed rule are to:

• Enhance the usefulness of high-risk loan categories;

• Replace the subjective measure of ''reasonable doubt'' used for reinstating loans to accrual status with a measurable standard;

• Improve the timely recognition of a change in a loan's status; and

• Update existing terminology and make other grammatical changes.

II. Background

In 1993, we issued subpart C of part 621, ''Loan Performance and Valuation Assessment,'' in part to establish standard performance categories for high-risk loans and set the criteria for reinstating those loans to accrual status.[1] The existing loan performance categories are in § 621.6 and the criteria for reinstating loans to accrual status are in § 621.9. Neither rule section has been substantively updated since 1993.[2]

Existing § 621.6 sets forth three performance categories for high risk loans: (1) Nonaccrual loans, (2) Formally restructured loans, and (3) Loans 90-days past due still accruing interest. There are several conditions listed in paragraph (a) of § 621.6 for moving a loan to ''nonaccrual'' (noninterest-earning) status. Among them are: Delinquency, questions regarding future ability to pay, loan servicing that resulted in a portion of the debt being charged off, and the value of security for the loan. Only one of these conditions needs to exist to categorize a loan as nonaccrual. If a loan satisfies the criteria for more than one performance category, the rule requires using the nonaccrual category, resulting in the nonaccrual category being the primary performance category of high-risk loans.

Under § 621.9, a loan in nonaccrual status may only be reinstated to accrual (interest-earning) status if four criteria are satisfied:

(1) The loan is now current on payments,

(2) Certain prior charge offs have been recovered,

(3) There remains ''no reasonable doubt'' as to a borrower's willingness to remain current on payments, and

(4) The borrower has remained current on payments for a sustained period.

When developing these criteria in 1993, FCA explained the intent of the criteria was to verify resolution of the factor(s) causing the loan to be placed in nonaccrual status before its reinstatement to accrual status.[3]

The use of nonaccrual status to address high risk loans is common among financial institutions, with most commercial lenders applying the Federal Financial Institutions Examination Council (FFIEC)[4] reporting standards. The FFIEC standards include the criterion of moving loans into nonaccrual status when there is a deterioration in the financial condition of the borrower, payment in full of principal or interest is not expected, or a loan is 90 days or more past due. Under FFIEC's standards, those loans that are 90 days past due and both well secured and in the process of collection do not have to be placed into nonaccrual status. Reinstating a loan to accrual status under the standards of FFIEC requires either: (1) The loan to be current and an expectation by the bank that repayment of the remaining principal and all accrued interest will occur, or (2) the loan is well secured and is in the process of collection.

FCA's present accounting classification rules are generally similar, although not identical, to FFIEC standards.[5] Notably, a key difference from FFIEC standards is that our rule requires there be no reasonable doubt of the ''willingness'' of the borrower to repay before reinstatement to accrual status. Our rule makes no exception to this requirement for loans that are well secured and receiving servicing (*i.e.,* ''in the process of collection''). Additionally, our rules allow placing, and retaining for an indefinite period, a current loan in nonaccrual status when questions exist on the future collection of the debt.

III. Input Received

In the past few years FCA has received requests from System institutions, as well as member-borrowers of the System, to reconsider the role that future debt collection plays when categorizing a high-risk loan. For the System, the issue is generally directed at income recognition for payments made while a loan is in nonaccrual status. Nonaccrual loans that are current on payments technically accrue no interest for the lender even though the borrowers are making contractually scheduled payments. While those contractual loan payments are based on both principal and interest, the lender may, in accordance with generally accepted accounting principles (GAAP), elect not to recognize the interest portion as income if future payments are in doubt.[6] Further, under FCA regulation § 621.8(a), when the future collectability of a nonaccrual loan is in doubt, payments are applied in a manner ''necessary to eliminate such doubt.'' As a result, the interest portion of the scheduled payments is applied to principal in most cases. Then, after reinstatement to accrual status, those

[1] 58 FR 48780, September 20, 1993.

[2] The existing regulatory performance category in 12 CFR 621.6(b) was amended in 2013 to cite the Financial Accounting Standards Board's (FASB) ''Statement of Financial Accounting Standards No. 168,'' dated June 30, 2009. *See* 78 FR 21037, April 9, 2013. The reinstatement criteria of 12 CFR 621.9 has not been amended since 1993.

[3] *Refer to:* Preamble, proposed rule, 58 FR 32071, 32074 (June 8, 1993).

[4] FFIEC was created in 1979 through title X of Public Law 95–630. FFIEC facilitates uniformity in those federal examinations of financial institutions conducted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. FFIEC issues uniform principles, standards and reporting formats used by these regulators.

[5] FCA is not a FFIEC regulatory agency and therefore not required to follow FFIEC standards. However, we consider the policy positions of other regulators to decide if we should follow them or take a different approach if appropriate to implement the requirements and expectations of the Farm Credit Act of 1971, as amended.

[6] Using cash-basis accounting under GAAP, earnings from nonaccrual loans may be recognized if the loan balance is deemed to be fully collectable.

prior payments may be recognized against both accrued interest and principal consistent with the terms of the loan. From member-borrowers, requests to reconsider the role that future debt collection plays in allowing a current loan to be in nonaccrual status are most often directed at the loss of certain cooperative benefits or, in some instances, the misapplication of distressed loan servicing rights. This proposed rulemaking addresses the requests of both the System and its member-borrowers.

In developing this proposed rule, consideration was also given to a comment letter submitted for the 2016 Basel III capital rulemaking,[7] where the commenter remarked on our nonaccrual regulations. Specifically, the commenter asserted that our regulations for reinstatement of nonaccrual loans to accrual status were more restrictive and subjective than the reinstatement rules applicable to other regulated financial institutions. Additionally, the System has previously expressed that our unique categorization and reinstatement requirements often result in placing current loans into nonaccrual status and retaining them in that status for significantly longer periods than would be the case at a commercial bank. We believe our proposed changes to §§ 621.6 and 621.9 appropriately respond to these comments.

IV. Section-by-Section Analysis

We are proposing revisions to §§ 621.6 and 621.9 to reduce, but not remove, the emphasis on future debt collection when categorizing a high-risk loan. Instead of future debt collection, we propose using more measurable standards and aligning high-risk loan categories with the criteria used to determine when a loan is suitable for reinstatement to accrual status. As proposed, the rule would also emphasize the role loan servicing plays in addressing high-risk loans. In addition, we propose moving definitions currently located in the body of §§ 621.6 and 621.9 to the existing definition section of part 621.

We discuss the specifics of our proposal below.

A. Definitions

We propose moving four existing terms, whose meanings are currently located in the body of regulatory provisions, to the ''Definitions'' section in § 621.2. In moving the terms, we also propose contextual and grammatical changes to each of the four terms to improve clarity.

First, we propose moving the term ''adequately secured'' from its current location in § 621.6(a)(3)(i). We propose keeping the existing meaning and adding clarifying language to explain that the term describes collateral where there is a perfected security interest. We make the clarification because we want institutions to consider whether a lien on collateral is valid and enforceable when making ''adequately secured'' decisions. Should a particular security interest not be properly perfected, we expect institutions to look to other collateral when deciding if the loan is ''adequately secured.'' We further propose replacing the existing phrase ''discharge the debt in full,'' used when defining ''adequately secured,'' with language clarifying it means repayment of the loan's outstanding principal and any accrued interest.

Second, we propose moving the term ''in the process of collection'' from its current location in § 621.6(a)(3)(ii). In doing so, we propose removing language on documented future collection of past due amounts. Instead, we propose language to clarify that the term ''in the process of collection'' includes both debt collection and loan servicing efforts expected to result in either the recovery of the loan balance (including accrued interest and penalties) or reinstatement of the loan to current status in the near future. We believe the definition, as proposed, aligns with FASB Accounting Standards Codification (ASU) Subtopic 310–10–35 on Credit Impairment.[8] While the current incurred loss methodology under GAAP is based on a probable and incurred notion, the measurement of credit losses is changing under FASB's new accounting standard ''ASU No. 2016–13, Topic 326, Financial Instruments—Credit Losses.'' This new accounting standard introduces the current expected credit losses methodology for estimating allowances for credit losses. Although FASB's new accounting standard does not address when a financial asset should be placed in nonaccrual status, we believe updating the meaning of the term ''in the process of collection'' to reflect current FASB accounting standards is appropriate.

Third, we propose moving the § 621.6(c)(2) meaning of ''past due.'' As part of this relocation, we also propose replacing language regarding default after loan servicing with the phrase ''remains due.'' We believe the intent behind the existing servicing language is captured with the proposed use of ''remains due.''

Lastly, we propose moving the § 621.9(d) meaning of ''sustained performance'' and clarifying that ''sustained performance'' on a loan is based on contractual payment terms. That is, we propose clarifying sustained performance means not only making the payments listed in the loan contract on or before the due date but making payments in the amount listed in the loan note. For example, if the loan contract calls for unequal annual payments or an initial interest-only payment followed by equally amortized annual payments, those listed payments covered by the sustained performance period (*e.g.,* the most recent 2 consecutive annual payments) are what demonstrate sustained performance, regardless of whether the scheduled payments are interest-only, partial payments, regularly amortized installments, or a mixture of payment amounts. This proposed clarification follows our past explanations to System institutions that all payments listed in the contract, regardless of amount, scheduled to be made during the sustained performance period must be considered when determining ''sustained performance.'' We make no changes to the existing specified number of payments required to demonstrate performance.

As a conforming technical change, we propose removing the paragraph designations for all the terms in the ''Definitions'' section. No change to any term not discussed above is proposed beyond this format change. We also propose removing the parenthetical designations in the references to § 621.2 currently located in §§ 611.1205 and 615.5131.

B. Categorizing High-Risk Loans

We are proposing clarifying changes to the § 621.6 categories for high-risk loans, including removing redundancies. Further, we propose changes to § 621.6(a), (b), and (c) to align them with proposed changes to § 621.9 discussed later in this preamble. Also, we propose a format change to the high-risk loan category of ''other property owned'' located in § 621.6(d) by removing the word ''means'' and adding punctuation to distinguish the heading from its contents. To ensure clarity, we also propose adding the word ''legal'' to § 621.6(d) when describing the various methods of acquiring property.

[7] 81 FR 49720, July 28, 2016.

[8] FASB is an independent, private-sector, not-for-profit organization that establishes GAAP-based financial accounting and reporting standards for public and private companies.

1. General

We propose renaming § 621.6 as ''Categorizing high-risk loans and other property owned'' to add clarity. We also propose removing the last sentence of this section's introductory paragraph. This sentence requires loans meeting more than one performance category to be, in all cases, categorized as ''nonaccrual.'' We believe institutions should determine the most appropriate performance category for a high-risk loan, understanding that no more than one category may be used at any given time. We also believe the other proposed changes to §§ 621.6 and 621.9 will facilitate this decision-making process. However, we caution institutions that restructuring a past due nonaccrual loan will typically not qualify the loan to immediately be reported under another performance category. Past due nonaccrual loans that are restructured should remain in nonaccrual until the reinstatement requirements of § 621.9 are met.

2. Identifying Nonaccrual Loans

We propose updating language in § 621.6(a) to clarify that a loan is properly categorized as a ''nonaccrual loan'' when there is a known risk to the continued collection of principal or interest. The updated language would also require a loan categorized as ''nonaccrual'' to remain in that category, regardless of payment status, until the loan is eligible for reinstatement. For those loans current on payments while in nonaccrual status, we propose adding language to remind institutions of the notice and review provisions of part 617 of this chapter [9] as a means of facilitating compliance with both part 621 and part 617.

Additionally, we are proposing changes to the conditions listed in § 621.6(a), which are used in determining if the ''nonaccrual'' performance category is appropriate. We believe the proposed changes to these conditions provide more objective measures and will facilitate improved consistency in using the nonaccrual performance category. We also propose clarifying that one or more of the conditions must exist before a loan is placed in nonaccrual status. We discuss the proposed changes to each of the conditions below.

a. Deterioration of Financial Condition

We propose clarifying that the requirements of § 621.6(a)(1) are not dependent upon whether a loan is past due. Instead, the focus is on the lender determining if collection of the loan is unlikely—over the full term of the loan contract—based on a deterioration of the borrower's financial condition. Institutions should be proactive in identifying problem loans while the loans are still current. Because this provision would allow a current loan to be put in nonaccrual status, we expect the lender to have strong documented evidence supporting the forecast that collection of the loan is unlikely from all potential sources (*e.g.,* farm and off-farm income, other revenue, or liquidation of collateral). For example, insufficient cashflow or earnings could merit nonaccrual consideration. Similarly, if the servicing plan includes partial liquidation of collateral to bring the account current but results in insufficient collateral to secure the remaining debt and the borrower lacks other assets to pledge, then nonaccrual status may be warranted.

When evaluating the collectability of a loan, we believe there are many risks affecting current or future payments on the loan, including, but not limited to, the following:

- A third-party lender initiating foreclosure action against the primary collateral securing the borrower's loan with the institution;
- A primary obligor filing a voluntary petition in bankruptcy, or an involuntary petition in bankruptcy has been filed against a primary obligor;
- Substantial collateral has been abandoned or is in danger of disappearing or losing its value.
- Loss of off-farm income serving as a primary income source for loan payments;
- A lawsuit against a primary obligor adversely affecting repayment of the borrower's loan with the institution;
- Illness or injury to a primary operator of the farm significantly hindering the continued long-term operation of the farm business; and
- The cessation of farming operations where the primary obligors have not made other arrangements to repay the loan.

We also expect the institution to consider the likelihood of current or future loan servicing actions improving collection of the loan.

b. Interest Charge Offs

We propose amending the language of § 621.6(a)(2) to clarify that the existing phrase ''taken as part of a formal restructuring'' includes both distressed loan servicing as discussed in part 617 and troubled debt restructurings (TDR).[10] The use of the term ''charge off'' in §§ 621.6 and 621.9 refers to earned but uncollected interest income that was accrued and determined to be uncollectible. Proper accounting requires this interest to be backed out or reversed from the lender's income and the appropriate balance sheet accounts.[11] As part of a formal restructuring, the lender factors in recoupment of charged off amounts as well as reducing the risk associated with the loan. Thus, there is no need for a charge off already addressed by formal loan servicing to be a 'stand alone' factor in classifying the loan. However, the provision's applicability would continue to apply to loans with any portion charged off through means other than formal loan servicing as discussed in part 617 or a TDR.

c. Past Due More Than 90 Days

To simplify the categorization process for past due loans, we propose revising the existing three conditions that a loan be 90 days past due, under secured, and not in the process of collection. We instead propose that this provision capture those loans 90 days past due, but which cannot be categorized under § 621.6(c), ''Loans 90 days past due still accruing interest.'' As such, those 90 days past due high-risk loans not otherwise categorized under § 621.6(c) would be categorized as ''nonaccrual'' under § 621.6(a)(3).

d. Legal Action Has Been Initiated

We propose moving to its own paragraph that portion of existing § 621.6(a)(3)(ii) discussing the role of legal actions when classifying a loan. As part of the relocation, we also propose to simplify, clarify, and expand coverage of this condition to allow placing a loan into nonaccrual status if the loan is subject to legal collection action initiated by the lender or other forms of collateral conveyances used to collect the debt (including those initiated by the borrower). As proposed, the specific reference to a bankruptcy

[9] *See* 12 CFR 617.7400(d), which provides certain notice and review rights if a borrower's loan is current, in nonaccrual status, and the nonaccrual status may result in an adverse action. *See also,* 12 U.S.C. 2202d(d).

[10] Under GAAP, a TDR is a restructuring in which the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that the lender would not otherwise consider. Distressed loan servicing is a type of servicing specific to the System that has formal, legal pre-requisites and compliance requirements. The servicing available to a ''distressed loan'' includes formal restructurings of the types contemplated under a TDR action. However, not all ''troubled loans'' are ''distressed loans'' or vice versa.

[11] *See Also,* 12 CFR 621.5 on ''Accounting for allowance for loan losses and charge offs.''

filing would be removed in recognition that bankruptcies may not always involve conveyances of collateral. Instead, loans in bankruptcy where collateral is not liquidated may be considered for nonaccrual status based on concerns regarding future collectability, depending on the type of bankruptcy filing and similar considerations. We also propose removing existing language requiring an expectation of debt collection within 180 days before placing a loan in nonaccrual status. We believe removing the 180 days criteria allows System institutions additional discretion in both determining the status of a loan and setting a reasonable time period for collection that is based on the type of operation or source of repayment for the loan. As a general matter, the proposed changes would put focus on collection efforts arising after loan servicing has failed to resolve the financial stress to the loan (*e.g.,* beginning loan liquidation).

3. Categorizing Troubled Debt Restructurings

Existing § 621.6(b) identifies the loan performance category ''Formally restructured loans'' for those loans meeting the definition of a TDR under GAAP.[12] We propose adding a short explanation that borrowers of loans placed under this category are both experiencing financial difficulties and have received a financial concession from the lender. We believe adding this summary will improve the usefulness of the provision and the process used by an institution in determining whether the category may be applicable to the loan under consideration. We also propose removing specific reference to the FASB guidance document regarding TDR servicing to eliminate the need to revise the regulation solely because the FASB guidance has been modified.[13]

Additionally, we propose adding to the § 621.6(b) heading an abbreviation of ''(TDR).'' The abbreviation will provide a means of distinguishing these types of restructuring from other formal restructuring actions, such as those taken for distressed loans under part 617. The abbreviation should also add clarity that the accounting category is only for those loans receiving TDR assistance. While it is possible for a part 617 servicing action to also be subject to accounting treatment under GAAP rules for TDRs, institutions must make an individual assessment of each loan and the restructuring action it received to determine if it is appropriate to treat the loan servicing as a TDR. As explained by FASB, the determination of whether a restructuring of a debt instrument should be accounted for as a TDR requires consideration of all relevant facts and circumstances surrounding the transaction. Generally, no single characteristic or factor is determinative of whether the restructuring of a debt instrument is a TDR.

We also explain in this preamble that a loan under this category can remain in accrual status. To do so, there should be a current, well-documented credit analysis showing collection of principal and interest is reasonably assured under the modified terms. Reasonable assurance of repayment can include both financial calculations and consideration of whether the borrower demonstrated sustained historical repayment performance for a reasonable period before the modification. For additional information using this loan category, refer to FCA Informational Memorandum, ''Accounting and Disclosure of Troubled Debt Restructurings, as required under GAAP,'' issued March 14, 2011.

4. Classifying Loans 90 Days Past Due

We are proposing changes to the high-risk loan category at existing § 621.6(c)(1), ''Loans 90 days past due still accruing interest,'' to improve readability and add clarity. We propose specifying in the rule that the past due payments under review are those identified in the loan contract. We also propose adding language to address loans that are under secured since an under secured loan tends to pose a different risk to collection than one that is fully secured. While loans under this category are generally adequately secured, there may be instances where a loan is under secured. We propose language to explain that if a loan is under secured and 90 days past due, it may be placed in this category if there is a likelihood of the loan returning to current status within the near future. We would expect institutions to document the reasons for expecting a resolution of the delinquency, including identification of the source and timing of repayment, similar to what they do under the existing requirements of § 621.6(a)(3)(ii).

C. Reinstatement to Accrual Status

We propose replacing the existing § 621.9 requirement that a loan must satisfy all four of the following criteria before being reinstated to accrual status:

- The loan is now current on payments;
- Certain prior charge offs have been recovered;
- There remains ''no reasonable doubt'' as to a borrower's willingness to remain current on a debt; and
- The borrower, after becoming current on payments while in nonaccrual status, has remained current on payments for a sustained period.

Instead, we propose using different reinstatement requirements for loans based upon repayment patterns and loan security.

As proposed, the existing criteria that a loan must be current before being reinstated to accrual status would remain, but the loan would also have to have been considered for loan servicing before reinstatement. The servicing component would replace the existing requirement that ''no reasonable doubt'' remain as to the ''willingness and ability of the borrower to perform in accordance with the contractual terms of the loan agreement,'' which we propose removing. In addition, we propose keeping the criteria requiring collection of certain charged off amounts. The existing sustained performance criteria would also remain to demonstrate future repayment capability, but we propose adding additional flexibility. By necessity, these proposed changes in reinstatement eligibility would result in rewriting the entirety of § 621.9.

1. Repayment Status, Loan Security, and Repayment Capacity

a. Loans Continuously Current on Payments

We propose those loans that are current when placed in nonaccrual status, and which remain current while in nonaccrual status, be reinstated after being offered servicing designed to improve the collectability of the loan.[14] As proposed, these loans would no longer have to show an additional period of sustained performance or have charged off amounts collected. This proposed change would more closely align our rules with the FFIEC standards that allow a loan to be reinstated to accrual status when no principal or interest is past due, and the lender expects repayment of the remaining contractual principal and interest. Loans current when placed in nonaccrual status but later becoming past due would not be eligible for this reinstatement path. We propose the

[12] Under GAAP, a TDR is an accounting classification and involves a special set of accounting rules.

[13] The regulation currently identifies ''Financial Accounting Standards Board Accounting Standards Codification Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors.'' As explained in footnote 2, the last change to this rule was solely to update the FASB reference.

[14] Institutions must offer servicing, however, a borrower is not required to accept it.

different path for these loans because we believe a past due repayment pattern demonstrates additional risk to collection of the contractual principal and interest than what is posed by loans remaining current on payments. Therefore, loans remaining current on payments are allowed to be restated faster under the proposed rule than the present rule.

b. Loans Past Due on Payments When in Nonaccrual Status

We propose keeping the existing requirement to have certain charged off amounts recovered for loans past due when placed in nonaccrual status or becoming past due while in nonaccrual.[15] Also, we propose keeping the requirement that these loans become, and remain, current on payments for a sustained period before being eligible for reinstatement to accrual status. However, we are proposing two different measures of repayment capacity based on the adequacy of loan collateral: Sustained performance or past payment patterns.

i. Repayment Capacity and Fully Secured Loans

As proposed, those nonaccrual loans that were formerly past due but now current would, if fully secured, be allowed to demonstrate future repayment capability either through sustained performance or through consideration of past payment patterns. We are proposing that, if loan servicing results in modified loan terms, an institution could consider on-time payments made immediately before the loan was serviced, but only if those payments were of the same amount or higher than contractual payments in effect after servicing assistance. For example, a borrower who made partial payments before servicing and the servicing reduced structured payments to the level of the past partial payments, that prior repayment pattern may be considered. We believe this change will allow System institutions to recognize the reduced risk to a borrower's future performance capability on an adequately secured loan. We also consider this proposed change as responding to past comments asking us to make our rules more comparable to others within the financial services industry.

ii. Repayment Capacity and Under Secured Loans

If a formerly past due loan is, or remains, under secured after becoming current, we propose only permitting consideration of sustained performance before reinstatement to accrual status. This means considering all contractual payments, whether the payments are interest-only or principal and interest, for the specified period of time. For example, a TDR for an under secured loan may require annual payments and list the first annual payment as an interest-only payment, with equally amortized principal and interest payments required for the remainder of the loan term. Under this payment structure, sustained performance would be demonstrated by the borrower timely making the interest-only payment in year one and the equally amortized payment in year two. After doing so, the loan may be reinstated to accrual status. However, as proposed, the consideration of past payment patterns would not be allowed for these under secured loans.

2. Servicing Actions for Reinstatement

Our proposal would remove the existing criteria requiring ''no reasonable doubt'' remain as to the ''willingness'' of the borrower to repay the loan. When reviewing our existing rule, we looked at this requirement and determined it placed a higher standard on reinstatement to accrual status than is used for the initial classification as a nonaccrual loan. Existing § 621.6(a) requires no similar finding on a borrower's willingness to pay before placing a loan in nonaccrual status. In addition, a person's ''willingness'' to repay a debt is extremely difficult to assess or document. We also considered the safety and soundness concerns behind the provision, which were mainly directed at ensuring the reasons for placing a loan in nonaccrual status were fully addressed before reinstatement to accrual status. As this remains a concern, we looked for alternative criteria that was more measurable and identified loan servicing as an appropriate substitute.

In proposing a servicing element, we chose to use existing servicing policies required under 12 CFR 614.4170 and part 617 of this chapter. FCA regulation § 614.4170 requires each direct lender to adopt loan servicing policies and procedures designed to assure that loans will be serviced fairly and equitably while minimizing risk to the lender. Part 617 requires additional servicing policies specifically addressing distressed loans. Both servicing policies are expected to include specific plans for helping preserve the quality of sound loans and correct credit deficiencies as they develop. As such, we considered it appropriate to require institutions to apply those policies to nonaccrual loans before reinstatement to accrual status.

3. Reinstatement of Loans and the Credit Review Committee (CRC)

We are proposing to add language clarifying the impact CRC decisions may have on the accounting classification of loans. Section 4.14D(d) of the Farm Credit Act of 1971, as amended (Act), provides borrowers with current loans in nonaccrual status certain rights when the nonaccrual status results in adverse actions toward the borrower.[16] These borrower rights include written notice of the loan being moved to nonaccrual status and, if the loan is current, the opportunity to request the lender reinstate the loan to accrual status. Should such a request be denied, the borrower may seek a CRC review of the decision. FCA regulation § 617.7310(e) provides that CRC decisions are the final decision of the institution when made in compliance with applicable laws and regulations. In consideration of these requirements, we propose adding a provision explaining an institution is not prevented by the requirements of § 621.9 from reinstating a loan to accrual status if the CRC decides such action is appropriate and the CRC decision complies with all applicable laws, regulations, and is made in accordance with GAAP. We believe adding this provision not only facilitates compliance with the Act but emphasizes the potential impact a borrower may experience from changes in a loan's accounting status.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not

[15] *Refer to* earlier discussion at section IV.B.2.b of this preamble explaining the use of the term ''charge offs'' in §§ 621.6 and 621.9 refers to earned but uncollected interest income that was accrued and determined to be uncollectible.

[16] The term ''adverse action'' has broad meaning and should not be treated interchangeably with the more limited term ''adverse credit decision.'' Adverse actions can include may things, including, but not limited to, denial of patronage, a restricted opportunity to serve on the institution's board as a director, or revoking undisbursed loan commitments.

''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Parts 611, 615 and 621

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 615 and 621 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

§ 611.1205 [Amended]

■ 2. Section 611.1205 is amended by removing ''§ 621.2(c)'' and adding in its place ''§ 621.2'' each place it appears.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 3. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 615.5131 [Amended]

■ 4. Section 615.5131 is amended by removing ''§ 621.2(f)'' and adding in its place ''§ 621.2'' each place it appears.

PART 621—ACCOUNTING AND REPORTING REQUIREMENT

■ 5. The authority citation for part 621 is revised to read as follows:

Authority: Secs. 4.12(b)(5), 41.4, 4.14A, 4.14D, 5.17, 5.22A, 8.11 of the Farm Credit Act (12 U.S.C. 2183, 2202, 2202a, 2202d, 2252, 2257a, 2279aa–11); sec. 514 of Pub. L. 102–552.

■ 6. Section 621.2 is amended by:

■ a. Removing the paragraph designations (a) through (n); and

■ b. Adding definitions in alphabetical order for ''Adequately secured'', ''In the process of collection'', ''Past due'', and ''Sustained performance'' to read as follows:

§ 621.2 Definitions.

* * * * *

Adequately secured means the loan is collateralized by either or both:

(1) A perfected security interest in, or pledge of, real or personal property (including securities with an estimable value) having a net realizable value sufficient to repay the loan's outstanding principal and accrued interest; or

(2) The guarantee of a financially responsible party in an amount sufficient to repay the loan's outstanding principal and accrued interest.

* * * * *

In the process of collection means debt collection and loan servicing efforts are proceeding in due course and, based on a probable and specific event, are expected to result in the recovery of the loan's principal balance, accrued interest and penalties or reinstatement of the loan to current status within a reasonable time period.

* * * * *

Past due means a contractually scheduled loan payment has not been received on or before the contractual due date and remains due.

* * * * *

Sustained performance means the borrower has resumed on-time payment of the full amount of scheduled contractual loan payments over a sustained period. In accordance with the contractual payment schedule, the sustained on-time repayment period is demonstrated by making 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments. The payments considered are those listed in the loan contract as due during the sustained performance period, regardless of whether scheduled payments are interest-only, unequally amortized principal and interest, equally amortized principal and interest, or a combination of payment amounts.

■ 7. Revise § 621.6 to read as follows:

§ 621.6 Categorizing high-risk loans and other property owned.

Each institution must employ the practices of this section when categorizing high-risk loans and loan-related assets. A loan must not be put into more than one performance category.

(a) *Nonaccrual loans.* A loan is categorized as nonaccrual if there is a known risk to the continued collection of principal or interest. Once a loan is categorized as nonaccrual, it must remain in that category until reinstated to accrual status pursuant to § 621.9. Loans placed into nonaccrual status when current are also subject to the notice and review provisions of part 617 of this chapter. A loan must be categorized as nonaccrual if one or more of the following conditions exist:

(1) The loan may or may not be past due, but the institution has determined collection of the outstanding principal and interest, plus future interest accruals, over the full term of the loan is not expected because of a documented deterioration in the financial condition of the borrower;

(2) Any portion of the loan has been charged off, except in cases where the charge off resulted from a formal restructuring of the loan under part 617 of this chapter or troubled debt restructuring (TDR);

(3) The loan is 90 days past due and is not otherwise eligible for categorization under paragraph (c) of this section; or

(4) Legal action, including foreclosure or other forms of collateral conveyance, has been initiated to collect the outstanding principal and interest.

(b) *Formally restructured loans (TDR).* A loan is categorized as a formally restructured loan (TDR) if the restructuring is determined to be a TDR under generally accepted accounting principles and the guidance issued by the Financial Accounting Standards Board. Borrowers with loans categorized as TDRs are experiencing both financial difficulties and have received financial concessions from the institution.

(c) *Loans 90 days past due still accruing interest.* A loan is categorized as 90 days past due still accruing interest when it is 90 days contractually past due, adequately secured, and in the process of collection. If the loan is not adequately secured, it cannot be categorized under this category unless there is evidence to suggest repayment within a reasonable time period of either the past due amount or the remaining principal and interest owed.

(d) *Other property owned.* Any real or personal property, other than an interest-earning asset, that has been

acquired as a result of full or partial liquidation of a loan, through foreclosure, deed in lieu of foreclosure, or other legal means.

■ 8. Revise § 621.9 to read as follows:

§ 621.9 Reinstatement to accrual status.

(a) Before being reinstated to accrual status, a loan must be current on contractual payments and the borrower offered servicing in accordance with the institution's policies maintained under either § 614.4170 or part 617 of this chapter, whichever is applicable. Additional reinstatement eligibility requirements are dependent upon certain characteristics of the loan under review.

(1) Loans that were current when placed in nonaccrual status may be reinstated to accrual status if the loans did not become past due while in nonaccrual status and known risks to the continued collection of principal or interest have been addressed through servicing efforts. If the loan became past due while in nonaccrual status, it may only be reinstated under paragraphs (a)(2) and either (a)(3) or (a)(4) of this section, as applicable.

(2) Loans past due when placed in nonaccrual status, or becoming past due while in nonaccrual status, must have prior charge offs recovered prior to reinstatement to accrual status. Charge offs resulting from formal restructuring of the loan under part 617 of this chapter or a TDR are exempt from recovery under this provision.

(3) Loans that are not adequately secured and were past due when placed in nonaccrual status, or became past due while in nonaccrual status, must remain current on contractual payments for a period of sustained performance before they may be reinstated.

(4) Loans that are adequately secured but were past due when placed in nonaccrual status, or became past due while in nonaccrual status, must have a recent repayment pattern demonstrating future repayment capacity to make on-time payments before the loans may be reinstated. The repayment pattern is established in one of two ways:

(i) Sustained performance in making on-time contractual payments, or

(ii) A recent history of making on-time partial payments in amounts the same or greater than newly restructured payment amounts.

(b) Nothing in this section prevents a current loan from being reinstated to accrual status in response to a Credit Review Committee decision issued under section 4.14D(d) of the Farm Credit Act of 1971, as amended, when that decision was made in compliance with applicable laws, regulations, and in accordance with generally accepted accounting principles.

Dated: March 26, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–06216 Filed 4–2–19; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2019–N–1132]

The Future of Insulin Biosimilars: Increasing Access and Facilitating the Efficient Development of Biosimilar and Interchangeable Insulin Products; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public hearing to discuss access to affordable insulin products and issues related to the development and approval of biosimilar and interchangeable insulin products.

DATES: The public hearing will be held on May 13, 2019, from 9 a.m. to 5 p.m. The public hearing may be extended or may end early depending on the level of public participation. Persons seeking to present at the public hearing must register by April 29, 2019. Persons seeking to speak at the public hearing must register by May 9, 2019. Persons seeking to attend, but not present at, the public hearing must register by May 9, 2019. Section III provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until May 31, 2019.

ADDRESSES: The public hearing will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503B), Silver Spring, MD 20993–0002. Entrance for public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 31, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 31, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1132 for ''The Future of Insulin Biosimilars: Increasing Access and Facilitating the Efficient Development of Insulin Biosimilar and Interchangeable Products; Public Hearing; Request for Comments.'' Received comments, those filed in a timely manner (see

ADDRESSES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Allison Hoffman, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3138, Silver Spring, MD 20993, 301–796–9203, *OMPTFeedback@fda.hhs.gov* (please use ''Insulin Biosimilars part 15'' as subject line).

SUPPLEMENTARY INFORMATION:

I. Background

The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) requires that on March 23, 2020, an approved marketing application for a biological product under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) will be deemed to be a license for the biological product under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) and regulated under the PHS Act. The transition of biological products currently approved under the FD&C Act to the PHS Act will open the pathway to market for new products that are biosimilar to, or interchangeable with, these transitioned products. The biological products affected by this transition include insulin products, insulin mix products, and insulin analog products (collectively described in this notification as ''insulin products''), which historically have been approved under the FD&C Act.

Insulin is a lifesaving drug that many Americans depend on to treat their diabetes. In recent years, however, increases in the prices of insulin products have raised serious concerns about the ability for many patients to access the insulin needed to survive. FDA is holding this public hearing to receive input from stakeholders as the Agency prepares for the submission and review of applications for biosimilar and interchangeable insulin products. FDA anticipates that these products, once they are approved, will bring new competition to the insulin market and help provide affordable treatment options to patients with diabetes without compromising safety and effectiveness.

The BPCI Act amended the PHS Act and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. This abbreviated pathway allows an applicant to rely on certain existing knowledge about the safety and effectiveness of a biological reference product to support approval, provided the sponsor can demonstrate that its product meets the applicable statutory standards, including biosimilarity. Thus, the sponsor may be able to develop the biosimilar at a lower cost, relative to the development of a novel biological product submitted in a stand-alone marketing application. The PHS Act defines biosimilarity to mean ''that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components'' and that ''there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product'' (section 351(i)(2) of the PHS Act).

An interchangeable biosimilar may be substituted for the reference product without the intervention of the prescribing healthcare provider (see section 351(i)(3) of the PHS Act). To meet the standard of ''interchangeability,'' an applicant must provide sufficient information to demonstrate: (1) Biosimilarity; (2) that the biological product can be expected to produce the same clinical result as the reference product in any given patient; and (3) for products administered more than once to an individual, that the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch (section 351(k)(4) of the PHS Act).

After the March 23, 2020, transition, insulin products that will be deemed to be licensed under the PHS Act will be able to act as reference products for proposed biosimilar or interchangeable insulin products. There are currently no approved prescription insulin products that can be substituted at the pharmacy level. An interchangeable insulin product can be substituted for the reference insulin product at the pharmacy, potentially leading to increased access and lower costs for patients.

This public hearing is a component of FDA's broader effort to facilitate the growth of a competitive market for biologics. In July 2018, FDA issued its Biosimilars Action Plan, which focuses on four areas of FDA activities: (1) Improving the efficiency of the biosimilar and interchangeable product development and approval process; (2) maximizing scientific and regulatory clarity for the biosimilar product development community; (3) developing effective communications to improve understanding of biosimilars among patients, clinicians, and payors; and (4) supporting market competition by reducing gaming of FDA requirements or other attempts to unfairly delay competition. On September 4, 2018, FDA held a public meeting entitled ''Facilitating Competition and Innovation in the Biological Products Marketplace'' (see 83 FR 35154, July 25, 2018) and received submissions to an associated docket (Docket No. FDA–2018–N–2689).

II. Purpose and Scope of the Public Hearing

FDA is holding this public hearing to receive input from patients, families,

healthcare providers, and other stakeholders who live with diabetes or care for someone with diabetes about the challenges and opportunities FDA should consider as we prepare for the submission and review of applications for biosimilar and interchangeable insulin products. We also want to hear from manufacturers and other stakeholders about the development process for biosimilar and interchangeable insulin products. FDA has determined that a public hearing is the most appropriate way to ensure public engagement on these topics.

Questions for Commenters to Address: FDA is soliciting input on steps the Agency can take to facilitate increased access to insulin products, including biosimilar and interchangeable insulin products. FDA is interested in how we can encourage the development of biosimilar and interchangeable insulin products, while achieving the balance between competition and innovation intended by Congress in the BPCI Act. Although FDA welcomes all feedback on any public health, scientific, regulatory, or legal considerations relating to this topic, we particularly encourage commenters to consider the following topics and questions as they prepare their comments or statements.

1. Scientific standards for evaluating the biosimilarity and interchangeability of an insulin product.

a. What considerations should FDA take into account when evaluating data and other information submitted by an applicant, including from analytical and clinical studies, to determine whether an insulin product is *biosimilar* to a reference product?

b. What considerations should FDA take into account when evaluating data and other information submitted by an applicant, to determine whether an insulin product is *interchangeable* with a reference product?

2. Other regulatory considerations: Do certain insulin products, for example, those that include use in insulin pumps for continuous subcutaneous infusion among the approved uses or those approved with over-the-counter marketing status, raise unique scientific considerations? What factors should FDA consider when evaluating a proposed biosimilar or interchangeable insulin product if the reference product raises such considerations? Are there additional factors FDA should evaluate for interchangeable insulin products, which may be substituted at the pharmacy for the reference product without the involvement of the prescriber?

3. Patient experience: What aspects of the patient experience with insulin products should FDA consider when evaluating a proposed biosimilar or interchangeable insulin product?

4. Information resources for patients, clinicians, pharmacists, and other stakeholders: What information is needed to develop effective communications to improve understanding and promote awareness among patients, clinicians, pharmacists, and other stakeholders about biosimilar and interchangeable insulin products?

III. Participating in the Public Hearing

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance will be free and on a first-come, first-served basis. An agenda for the hearing and any other background materials will be made available 5 days before the hearing at *https://www.fda.gov/FDAgov/NewsEvents/MeetingsConferencesWorkshops/ucm632081.htm.* If you need special accommodations because of a disability, please contact Allison Hoffman (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the hearing.

Registration and Requests for Formal Oral Presentations: For those interested in presenting at the meeting with a formal oral presentation, please register at *https://www.eventbrite.com/e/insulin-biosimilar-part-15-tickets-56571622245* as ''In-person presenter''. Presenter registrations are due April 29, 2019.

FDA will try to accommodate all persons who wish to make a formal oral presentation. Formal oral presenters may use an accompanying slide deck. Individuals wishing to present should identify their name, affiliation (if appropriate), and the number of the specific question, or questions, they wish to address. This will help FDA organize the presentations. Individuals and organizations with common interests should consider consolidating or coordinating their presentations and request time for a joint presentation. Individual organizations are limited to a single presentation slot. FDA will notify registered presenters of their scheduled presentation times. The time allotted for each presentation will depend on the number of individuals who wish to speak. Registered presenters making a formal oral presentation are encouraged to submit an electronic copy of their presentation (PowerPoint or PDF) to *OMPTFeedback@fda.hhs.gov* with the subject line ''Insulin Biosimilars part 15 Presentation'' on or before May 6, 2019. Persons registered to present are encouraged to arrive at the hearing room early and check in at the onsite registration table to confirm their designated presentation time. Actual presentation times, however, may vary based on how the meeting progresses in real time.

Registration and Requests for Open Public Hearing Speaker slots: For those interested in participating as an Open Public Hearing speaker, please register at *https://www.eventbrite.com/e/insulin-biosimilar-part-15-tickets-56571622245* as ''In-person Open Public Hearing presenter''. Open Public Hearing registrations are due May 9, 2019; however, you may sign up as an Open Public Hearing speaker the day of the meeting. Time and space are limited and available on a first-come, first-served basis. Open Public Hearing speakers have less allotted time than formal oral presenters and will deliver oral testimony only (no accompanying slide deck).

Persons registered to participate during the Open Public Hearing are encouraged to arrive at the hearing room early and check in at the onsite registration table to confirm their Open Public Hearing participation.

Those without internet or email access can request to participate as a formal presenter or an open public hearing speaker by contacting Allison Hoffman by the above dates (see **FOR FURTHER INFORMATION CONTACT**).

In-person attendance: For those who would like to attend in-person, but who are not making a formal presentation or participating in the Open Public Hearing, please register at *https://www.eventbrite.com/e/insulin-biosimilar-part-15-tickets-56571622245* as ''In-person attendee—no participation''. You may choose not to register; however, seating is limited, and space will be available on a first-come, first-served basis.

Streaming Webcast of the Public Hearing: For those unable to attend in person, FDA will provide a live webcast of the hearing. To join the hearing via the webcast, please go to *https://collaboration.fda.gov/insulin051319.* Please register at *https://www.eventbrite.com/e/insulin-biosimilar-part-15-tickets-56571622245* as ''online (webcast only)''.

Media: Please register at *https://www.eventbrite.com/e/insulin-biosimilar-part-15-tickets-56571622245* as ''Media'' by May 9, 2019.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *https://www.fda.gov/FDAgov/NewsEvents/MeetingsConferencesWorkshops/ucm632081.htm* and *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**).

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, and the Office of the Chief Counsel. Under § 15.30(f) (21 CFR 15.30(f)), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under 21 CFR 10.205, representatives of the media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. Persons attending FDA's hearings are advised that the Agency is not responsible for providing access to electrical outlets. The hearing will be transcribed as stipulated in § 15.30(b) (see *Transcripts*). To the extent that the conditions for the hearing, as described in this notification, conflict with any provisions set out in part 15, this notification acts as a waiver of those provisions as specified in § 15.30(h).

Dated: March 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06438 Filed 4–2–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2019–N–1482]

Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public hearing to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds.

DATES: The public hearing will be held on May 31, 2019, from 8 a.m. to 6 p.m. Submit requests to make oral presentations and comments at the public hearing by May 10, 2019. Electronic or written comments will be accepted until July 2, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration and information.

ADDRESSES: The public hearing will be held at FDA White Oak Campus,10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FDA is establishing a docket for public comment on this hearing. The docket number is FDA–2019–N–1482. The docket will close on July 2, 2019. Submit either electronic or written comments on this public hearing by July 2, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 2, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 2, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1482 for ''Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked

as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beth F. Fritsch, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 32, Rm. 5308, Silver Spring, MD 20993, 301–796–8451, *StakeholderEngagement@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of Hearing

Cannabis is a plant of the Cannabaceae family and contains more than 80 biologically active chemical compounds. The most commonly known compounds are delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD). Parts of the *Cannabis sativa* plant have been controlled under the Federal Controlled Substances Act (CSA) since 1970 under the drug class ''Marihuana'' (21 U.S.C. 802(16).[1] ''Marihuana'' is listed in Schedule I of the CSA due to its high potential for abuse, which is attributable in large part to the psychoactive effects of THC, and the absence of a currently accepted medical use for marijuana in the United States. Cannabis and cannabis-derived products have been the subject of increasing interest by consumers, industry, researchers, the public, and regulators. Regulatory oversight of products containing cannabis or cannabis-derived compounds is complex and involves multiple Federal and State agencies.

The legality of cannabis has been changing over time at both the State and Federal levels. Currently, 33 States and Washington, DC, allow ''medical'' use of marijuana under State law and 14 additional States have State law ''medical'' programs that are limited to CBD products. In addition, 10 States and Washington, DC, have legalized marijuana for recreational use under State law, and 13 additional States have decriminalized recreational marijuana possession under State law in some form.

At the Federal level, the Agriculture Improvement Act of 2018, Public Law 115–334 (the 2018 Farm Bill), was signed into law on December 20, 2018. Among other things, this new law changes certain Federal authorities relating to the production and marketing of hemp, defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. These changes include removing hemp from the CSA, which means that cannabis plants and derivatives that contain no more than 0.3 percent THC on a dry weight basis are no longer controlled substances under Federal law.

The 2018 Farm Bill explicitly preserved FDA's authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act.[2] In doing so, Congress recognized FDA's important public health role with respect to all the products it regulates. Therefore, because the 2018 Farm Bill did not change FDA's authorities, cannabis and cannabis-derived products are subject to the same authorities and requirements as FDA-regulated products containing any other substance, regardless of whether the products fall within the definition of ''hemp'' under the 2018 Farm Bill.

FDA is aware that some companies are marketing products containing cannabis and cannabis-derived compounds in ways that violate the FD&C Act. FDA has taken action against companies illegally selling cannabis and cannabis-derived products that put the health and safety of consumers at risk. For example, FDA has issued warning letters[3] to companies illegally selling CBD products that were intended to prevent, diagnose, mitigate, treat, or cure serious diseases, such as cancer, and that had not obtained new drug approvals. Selling unapproved drug products with unsubstantiated therapeutic claims is not only a violation of the law, but also can put patients at risk as the marketing of unproven treatments raises significant public health concerns. Patients and other consumers may be influenced not to use approved therapies to treat serious and even fatal diseases.

FDA's warning letters also cited food products to which CBD had been added and CBD products marketed as dietary supplements. As discussed below, under current law, such products violate the FD&C Act because CBD is an active ingredient in an approved drug and has been the subject of substantial clinical investigations. Allowing drug ingredients in foods can undermine the drug approval process and diminish commercial incentives for further clinical study of the relevant drug substance. It also raises questions about the safety to consumers of exposure from broader consumption of such ingredients.

While the use of cannabis and cannabis-derived products, including hemp and hemp-derived products, has increased dramatically in recent years, questions remain regarding the safety considerations raised by the widespread use of these products. These questions could impact the approaches we consider taking in regulating the development and marketing of products. For example, a 2017 report by the National Academies of Sciences, Engineering, and Medicine[4] reviewed the scientific literature published since 1999 about what is known about the health impacts of cannabis and cannabis-derived products and identified the need for additional research. In addition, during its review of the marketing application for EPIDIOLEX, a CBD oral solution indicated for the treatment of seizures associated with Lennox-Gastaut syndrome and Dravet syndrome in patients 2 years of age and older that was approved in 2018, FDA identified certain safety concerns (see FDA's drug approval package at: *https://www.accessdata.fda.gov/drugsatfda_docs/nda/2018/210365Orig1s000TOC.cfm*). Specifically, at doses of 20

[1] Under the CSA, the term ''marihuana'' means all parts of the plant *Cannabis sativa L.,* whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such a term does not include hemp or the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

[2] For a discussion of FDA's legal authorities, see section IV of this notice.

[3] *https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm484109.htm.*

[4] *http://www.nationalacademies.org/hmd/Reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx.*

milligrams per kilogram of body weight per day (mg/kg/day) of EPIDIOLEX in clinical trials, there was a potential for liver injury, evidenced by elevated transaminase levels. This is a potentially serious risk that can be managed when the product is taken under medical supervision in accordance with the FDA approved labeling for the product, but it is less clear how this risk might be managed if this substance is used far more widely, without medical supervision, and not in accordance with FDA-approved labeling. Other serious treatment-emergent adverse events reported in clinical studies of EPIDIOLEX included somnolence and lethargy; and hypersensitivity reactions. Common adverse reactions included decreased appetite, diarrhea, and sleep disorders.

Given the substantial interest in this topic and Congressional interest in fostering the development of appropriate hemp products under the 2018 Farm Bill, while also preserving FDA's ability to protect the public health, FDA is holding a public hearing. The goal of the hearing is to obtain additional scientific data and other information related to cannabis and cannabis-derived compounds, both from botanical and synthetic sources, to inform our regulatory oversight of these products. FDA does not intend for this hearing to produce any decisions or new positions on specific regulatory questions, but this hearing is expected to be an important step in our continued evaluation of cannabis and cannabis-derived compounds in FDA-regulated products.

II. Participating in the Public Hearing

Registration: To register to attend the public hearing, either in person or by webcast, on ''Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds'' please register at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm634550.htm.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone and whether you want to attend in person or by webcast.

Request for Presentations: During online registration, you may indicate if you wish to make a formal presentation (with accompanying slide deck) or present oral comments during the public hearing session (with no slide deck) and which topic(s) you would like to address. FDA will do its best to accommodate requests to make public presentations. We are seeking to have a broad representation of ideas and issues presented at the meeting. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each presentation is to begin and will select and notify participants by May 21, 2019. All requests to make presentations must be received by the close of registration on May 10, 2019, Eastern Time.

If selected for a formal oral presentation (with a slide deck), each presenter must submit an electronic copy of their presentation (PowerPoint or PDF) to *Stakeholderengagement@fda.hhs.gov* with the subject line ''Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds'' on or before May 28, 2019. No commercial or promotional material will be permitted to be presented or distributed at the public hearing.

Persons notified that they will be presenters are encouraged to arrive at the hearing room early and check in at the onsite registration table to confirm their designated presentation time. Actual presentation times may vary based on how the meeting progresses in real time. An agenda for the hearing and any other background materials will be made available 5 days before the hearing at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm634550.htm.*

Those without internet or email access can register and/or request to participate by contacting Beth F. Fritsch by the above dates (see **FOR FURTHER INFORMATION CONTACT**).

Streaming Webcast of the Public Hearing: For those unable to attend in person, FDA will provide a live webcast of the hearing. To join the hearing via the webcast, please go to *https://collaboration.fda.gov/cannabispart15.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm634550.htm.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**) and also will be available at *https://www.regulations.gov.*

III. Issues for Consideration and Request for Data and Information

We encourage public comments and presentations at the public hearing. In submitting comments, data, and information to the docket, please identify available references for the data and information, as well as the general category area and specific question number listed below.

A. Health and Safety Risks

As noted above, there are many unanswered questions about the safety of cannabis and cannabis-derived products. To inform FDA's regulatory oversight of these products, especially as we consider whether it is appropriate to exercise our authority to allow the use of CBD in dietary supplements and other foods, we are interested in obtaining information, including data and studies, on, among other things:

1. Based on what is known about the safety of products containing cannabis and cannabis-derived compounds, are there particular safety concerns that FDA should consider regarding its regulatory oversight and monitoring of these products? For example:

- What levels of cannabis and cannabis-derived compounds cause safety concerns?
- How does the mode of delivery (*e.g.,* ingestion, absorption, inhalation) affect the safety and exposure to cannabis and cannabis-derived compounds?
- How do cannabis and cannabis-derived compounds interact with other substances (*e.g.,* drug ingredients)?

2. Are there special human populations (*e.g.,* children, adolescents, pregnant and lactating women) or animal populations (*e.g.* species, breed, or class) that should be considered when assessing the safety of products containing cannabis and cannabis-derived compounds?

3. What are the characteristics of a successful system to collect representative safety information at the national or State level about products containing cannabis and cannabis-derived compounds?

- Are there systems that currently exist for the collection of this information (other than FDA's systems)?
- Are there particular safety concerns related to the overlap of therapeutic dose levels from approved drug products, with potential exposure from other uses (*e.g.,* from food, dietary supplements, cosmetics)? Please identify any safety concerns and include relevant data or studies.

4. What endpoints or outcomes would define a maximal acceptable daily intake from all products?

- What margin of exposure would represent an appropriate and safe level from anticipated cumulative exposure? Does that margin of exposure vary based on the form of consumption (*e.g.,* from ingestion, absorption, inhalation)? Please explain your reasoning and include relevant data or studies.

• What mechanisms would be available to help ensure that this margin of exposure was maintained at a level sufficiently protective of public health?

5. Are there any data known that would support the safe use of cannabis and cannabis-related compounds in general food use (including dietary supplements), including data regarding exposure levels to cannabis and cannabis-related compounds in foods (including dietary supplements) that would be acceptable from a food safety perspective?

• What data are available about residues of cannabis-derived compounds in human foods (*e.g.,* meat, milk, or eggs) that come from animals that consume cannabis or cannabis-derived compounds? Are there residue levels that should be tolerated in these foods? Please provide data or other information to support your reasoning.

6. How does the existing commercial availability of food products containing cannabis-derived compounds such as CBD (which may in some cases be lawful at the State level but not the Federal level) affect the incentives for, and the feasibility of, drug-development programs involving such compounds?

• How would the incentives for, and the feasibility of, drug development be affected if food products containing cannabis-derived compounds, such as CBD, were to become widely commercially available? How would this change if FDA established thresholds on acceptable levels of cannabinoids, including CBD, in the non-drug products it regulates? What else could FDA do to support drug development from cannabinoids?

B. Manufacturing and Product Quality

Please provide data and information on how products containing cannabis or cannabis-derived compounds (other than those marketed as drugs in compliance with the FD&C Act) are currently manufactured, including information about methods for ensuring product quality and consistency. More specifically, we are interested in obtaining information on, among other things:

1. Are there particular standards needed to address any safety issues related to the manufacturing, processing, and holding of products containing cannabis and cannabis-derived compounds (*e.g.,* genotoxic impurities, degradation of active compounds)? Please identify or describe those standards.

2. Are there particular standards or processes needed to ensure manufacturing quality and consistency of products containing cannabis or cannabis-derived compounds, including standards applied to evaluate product quality? Please identify or describe those standards.

3. What validated analytical testing is needed to support the manufacturing of safe and consistent products?

4. Are there any currently used standardized definitions for the ingredients in cannabis products (*e.g.,* ''hemp oil'')? If standardized definitions would be helpful, what terms should be defined and what should the definition(s) be?

5. What are the functional purposes of adding cannabis-derived compounds, such as CBD, to foods (*e.g.,* nutritive value, technical effect), both in terms of manufacturer intent and consumer perceptions and/or expectations? To the extent a compound is added to food to achieve a particular functional purpose, what evidentiary support is available to demonstrate that the addition of such compound has the intended or perceived effect?

C. Marketing/Labeling/Sales

FDA is interested in information about how products containing cannabis or cannabis-derived compounds, other than drug products approved by FDA for human or animal use, are marketed, labeled, and sold. More specifically, we seek information on, among other things:

1. How should consumers be informed about the risks associated with such products (*e.g.,* directions for use, warnings)? What specific risks should consumers be informed about? Are there any subpopulations for which additional warnings or restrictions are appropriate? Please explain your reasoning.

2. What conditions, restrictions, or other limitations on the manufacturing and distribution of these products have been put in place under State or local law, particularly with respect to food products containing cannabis-derived compounds such as CBD (which may, in some cases, be lawful at the State level but not the Federal level)? What other conditions, restrictions, or other limitations might be appropriate to ensure adequate consumer information and to protect the public health?

3. What statutory or regulatory restrictions are in place under State or local law to warn about the use of these products by certain vulnerable human populations (*e.g.,* children, adolescents, pregnant and lactating women) or animal populations (*e.g.* species, breed, or class)? Are there other steps that should be taken to warn about use by vulnerable populations? Please identify such steps and how they would apply to a particular subpopulation.

4. What other information should FDA consider in the labeling of specific product categories of cannabis and cannabis-derived products?

IV. FDA Legal Authorities

There are FD&C Act provisions that are relevant to the legality of cannabis or cannabis-derived products. To help in understanding the context of the public hearing and current FDA actions, a synopsis of FDA legal authorities is provided below.

A. Human Drugs

A drug is an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals (section 201(g) of the FD&C Act (21 U.S.C. 321(g)). A drug is also defined as an article (other than food) intended to affect the structure or any function of the body of man or other animals. Thus, the determination of whether a product is a drug turns in part on the ''intended use'' of the product.

By statute, it is a prohibited act to introduce a new drug into interstate commerce unless it has an approved marketing application (New Drug Application (NDA) or Abbreviated New Drug Application (ANDA)) (section 301(d) of the FD&C Act (21 U.S.C. 331(d)). FDA reviews the data submitted in a marketing application to evaluate whether a drug product meets the statutory standards for approval. To conduct clinical research that can lead to an approved new drug, including research using materials from plants such as cannabis, researchers submit an Investigational New Drug (IND) application to FDA, as described in 21 CFR part 312.

FDA has approved several drug products that contain compounds found in cannabis. Most recently, FDA has approved EPIDIOLEX,[5] which contains the purified drug substance CBD for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients 2 years of age and older. We also have approved MARINOL and SYNDROS for therapeutic uses in the United States, including for the treatment of anorexia associated with weight loss in AIDS patients. MARINOL and SYNDROS include the active ingredient dronabinol, a synthetic THC which is considered the psychoactive component of marijuana. Another FDA-approved drug, CESAMET, contains the active ingredient nabilone, which has a

[5] *https://www.accessdata.fda.gov/drugsatfda_docs/nda/2018/210365Orig1s000TOC.cfm.*

chemical structure similar to THC and is synthetically derived.

B. Human Foods/Dietary Supplements

By statute, any substance intentionally added to food is a food additive, and therefore subject to premarket review and approval by FDA, unless the substance is generally recognized as safe (GRAS) by qualified experts under the conditions of its intended use, or the use of the substance is otherwise excepted from the definition of a food additive (sections 201(s) and 409 of the FD&C Act (21 U.S.C. 321(s) and 348)). Three hemp seed ingredients—hulled hemp seeds, hemp seed protein, and hemp seed oil—have gone through the FDA GRAS process and can be legally marketed in human foods for certain uses without food additive approval, provided they comply with all other requirements. More specifically, these three ingredients were the subject of a GRAS notice in which the submitter concluded that the ingredients were GRAS for specific uses in human foods. FDA evaluated these notices and had no questions [6] regarding the submitter's conclusions.

No other cannabis-derived compounds have been the subject of a food additive petition, an evaluated GRAS petition, or have otherwise been approved for use in food by FDA. Food companies that wish to use cannabis or cannabis-derived compounds in their foods are subject to the relevant laws and regulations that relate to the food additive [7] and GRAS [8] processes.

In addition, it is prohibited by statute to introduce or deliver for introduction into interstate commerce any food (including any animal food) to which has been added a substance which is an active ingredient in a drug product approved under section 505 of the FD&C Act (21 U.S.C. 355) or a drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public (section 301(*ll*) of the FD&C Act (21 U.S.C. 331(*ll*)). There are exceptions, including when the drug was marketed in food before the drug was approved or before the substantial clinical investigations involving the drug had been instituted or, in the case of animal food, that the drug is a new animal drug approved for use in animal food and used according to the approved labeling. Based on available evidence, FDA has concluded [9] that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food) to which THC or CBD has been added. When this statutory prohibition applies to a substance, the substance cannot be added to any food that is sold into interstate commerce unless the Secretary of the Department of Health and Human Services (the Secretary),[10] in the Secretary's discretion, has issued a regulation approving the use of the substance in the food (section 301(*ll*)(2) of the FD&C Act. To date, no such regulation has been issued for any substance.

For similar reasons, FDA has determined that products that contain THC or CBD cannot be marketed as dietary supplements.[11] By statute, if an ingredient is approved as a new drug under section 505 of the FD&C Act or has been authorized for investigation as a new drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, then products containing that substance are excluded from the statutory definition of a dietary supplement (sections 201(ff)(3)(B)(i) and (ii) of the FD&C Act. There is an exception if the substance was ''marketed as'' a dietary supplement or as a food before the new drug investigations were authorized. Based on available evidence, FDA has concluded that this is not the case for THC or CBD. There is also an exception if FDA has issued a regulation finding that the article would be lawful under the FD&C Act (section 201(ff)(3)(B) of the FD&C Act). At this time, no such regulation has been issued.

Some ingredients are derived from parts of the cannabis plant that may not contain THC or CBD, in which case those ingredients might fall outside the scope of this exclusion, and therefore might be able to be marketed as dietary supplements. However, the product must still comply with all other applicable laws and regulations governing dietary supplement products. For example, manufacturers and distributors who wish to market dietary supplements that contain ''new dietary ingredients'' (*i.e.,* dietary ingredients that were not marketed in the United States in a dietary supplement before October 15, 1994) generally must notify FDA [12] about these ingredients (section 413(d) of the FD&C Act (21 U.S.C. 350b(d)). Generally, the notification must include information demonstrating that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe under the conditions of use recommended or suggested in the labeling. A dietary supplement is adulterated if it contains a new dietary ingredient for which there is inadequate information to provide reasonable assurance that the ingredient does not present a significant or unreasonable risk of illness or injury (section 402(f)(1)(B) of the FD&C Act (21 U.S.C. 342(f)(1)(B)).

Numerous other legal requirements apply to food and dietary supplement products, including requirements relating to CGMPs, labeling, allergens, and various provisions of the FDA Food Safety Modernization Act. Information about these requirements, and about FDA requirements across all product areas, can be found on FDA's website, *https://www.fda.gov.*

C. Animal Food and Drugs

FDA regulates animal food in a variety of ways, including by approving safe food additives and establishing standards for animal food contaminants. FDA has not reviewed any food additive petitions for cannabis-derived animal feed, nor have any cannabis-derived feed ingredients been the subject of a GRAS determination by FDA, a GRAS notice that underwent FDA evaluation and received a ''no questions'' response, or otherwise been approved for use in animal feed by FDA. Animal food companies that wish to use cannabis or cannabis-derived compounds in their animal food products are subject to the relevant laws and regulations that relate to the food additive and GRAS processes. With respect to THC and CBD specifically, as discussed above, it is a prohibited act under section 301(*ll*) of the FD&C Act, to introduce or deliver for introduction into interstate commerce any animal food to which THC or CBD has been added.

As stated above, a drug is an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals (section 201(g) of the FD&C Act. A drug is also defined as an article (other than food) intended to affect the structure or any function of the body of man or other animals. Thus, the determination of whether a product is a drug turns in part on the ''intended use'' of the product.

[6] *https://www.fda.gov/Food/NewsEvents/ConstituentUpdates/ucm628910.htm.*

[7] *https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/default.htm.*

[8] *https://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/.*

[9] *https://www.fda.gov/newsevents/publichealthfocus/ucm421168.htm#legal.*

[10] The authority to make this determination has been delegated to FDA.

[11] *https://www.fda.gov/newsevents/publichealthfocus/ucm421168.htm#dietary_supplements.*

[12] *https://www.fda.gov/Food/DietarySupplements/NewDietaryIngredientsNotificationProcess/ucm109764.htm.*

Currently, there are no legally marketed new animal drugs that contain cannabis or cannabis-derived compounds. A new animal drug is deemed ''unsafe'' under section 512(a) of the FD&C Act (21 U.S.C. 360b(a)), and may not be sold into interstate commerce under section 301(a) of the FD&C Act), unless it has an approved new animal drug application (NADA), abbreviated NADA (ANADA), conditional approval (CNADA) or index listing. FDA reviews the data submitted in a marketing application to evaluate whether an animal drug product meets the statutory standards for approval. To conduct clinical research that can lead to an approved new animal drug, including research using materials from plants such as cannabis, researchers establish an Investigational New Animal Drug (INAD) file with FDA, and comply with the requirements described in 21 CFR part 511.

D. Cosmetics

Under the FD&C Act, cosmetic products and ingredients are not subject to premarket approval by FDA, except for most color additives. Certain cosmetic ingredients are prohibited or restricted by regulation,[13] but currently that is not the case for any cannabis or cannabis-derived ingredients. Ingredients not specifically addressed by regulation must nonetheless comply with all applicable requirements, and no ingredient—including a cannabis or cannabis-derived ingredient—can be used in a cosmetic if it causes the product to be adulterated or misbranded in any way. A cosmetic generally is adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling, or under such conditions of use as are customary or usual (section 601(a) of the FD&C Act (21 U.S.C. 361(a)).

E. Tobacco Products

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was enacted on June 22, 2009, amending the FD&C Act and providing FDA with the authority to regulate tobacco products. Specifically, the Tobacco Control Act amends the FD&C Act by adding a new chapter that provides FDA with authority over tobacco products. Section 901(b) of the FD&C Act (21 U.S.C. 387a(b)), as amended by the Tobacco Control Act, states that the new chapter in the FD&C Act (chapter IX—Tobacco Products) (21 U.S.C. 387 through 387u) applies to all cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any other tobacco products that the Secretary by regulation deems to be subject to chapter IX. In the **Federal Register** of May 10, 2016 (81 FR 28973), FDA issued a final rule deeming all products that meet the statutory definition of ''tobacco product'' in section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), except accessories of deemed tobacco products, to be subject to FDA's tobacco product authority (the deeming rule). The products now subject to FDA's tobacco product authority include electronic nicotine delivery systems (sometimes referred to as vapes, vaporizers, or electronic cigarettes, among other terms), cigars, waterpipes (hookah), pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that meet the statutory definition of ''tobacco product'' (other than accessories) that may be developed in the future. The term ''tobacco product'' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product) (section 201(rr)(1) of the FD&C Act. For example, an e-liquid mixture that contains both a cannabis-derived ingredient and nicotine made or derived from tobacco, and that is intended for human consumption, would likely be subject to FDA's chapter IX authorities.

Numerous legal requirements apply to tobacco products, including legal requirements that relate to new tobacco products that are to be introduced, or delivered for introduction into interstate commerce. Other requirements relate to registration and listing, and sales and distribution, among other things. For more information on these topics, including the statutory standards that must be met for FDA to permit new tobacco products to be marketed, we encourage interested parties to go to the Center for Tobacco Products' web page at *https://www.fda.gov/Tobacco Products/Labeling/RulesRegulations Guidance/ucm246129.htm.*

F. Medical Devices

An article is a device if it is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar related article which is intended for use in the diagnosis of disease or other conditions, or in the cure mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body of man (section 201(h) of the FD&C Act). A device is also defined as not achieving its primary intended purposes through chemical action in or on the body of man and which is not dependent upon being metabolized for the achievement of its primary intended purpose (Id.). For example, an article that is used to aid intake of a product that contains cannabis or a cannabis-derived compound could be properly classified as a device if it meets all aspects of the above definition.

The FD&C Act establishes a comprehensive system for the regulation of medical devices intended for human use. The FD&C Act categorizes medical devices into one of three classes based on their risks and the extent of the regulatory controls needed to provide reasonable assurance of their safety and effectiveness (see section 513 of the FD&C Act (21 U.S.C. 360c)). The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). Class I devices generally pose the lowest risk to the patient and/or user and class III devices pose the highest risk.

The class to which a device is assigned determines, among other things, the type of premarket submission required for FDA authorization to market. In general, if a device is classified as class I or II, and if it is not exempt, manufacturers must obtain FDA clearance of a premarket notification (also referred to as a 510(k) submission) (see sections 510(k) and 513(i) of the FD&C Act (21 U.S.C. 360(k) and 360c(i))). For class III devices, manufacturers generally must obtain FDA approval of a premarket approval application (PMA) (see section 515 of the FD&C Act (21 U.S.C. 360e)). It is a prohibited act to market a device without its requisite premarket approval (see section 501(f)(1) of the FD&C Act (21 U.S.C. 351)).

V. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that this public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from relevant program areas. Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members can pose questions; they can question any person during or at the

[13] *https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm127406.htm.*

conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C).

Under § 10.205, representatives of the media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. Persons attending FDA's public hearings are advised that FDA is not responsible for providing access to electrical outlets.

The hearing will be transcribed as stipulated in § 15.30(b) (see **SUPPLEMENTARY INFORMATION**). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

Dated: March 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06436 Filed 4–2–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. FDA–2018–N–1815]

RIN 0910–AI03

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to revise the quality standard for bottled water to specify that bottled water to which fluoride is added by the manufacturer may not contain fluoride in excess of 0.7 milligrams per liter (mg/L). This action, if finalized, will revise the current allowable levels for fluoride in domestically packaged and imported bottled water to which fluoride is added. We are taking this action to make the quality standard regulation for fluoride added to bottled water consistent with the recommendation by the U.S. Public Health Service (PHS) for community water systems that add fluoride for the prevention of dental caries. This action, if finalized, will not affect the allowable levels for fluoride in bottled water to which fluoride is not added by the manufacturer (such bottled water may contain fluoride from its source water).

DATES: Submit either electronic or written comments on the proposed rule by June 3, 2019.

ADDRESSES: You may submit comments as follows: Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 3, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of June 3, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions.'')

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1815 for ''Beverages: Bottled Water.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Yinqing Ma, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2479.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of the Proposed Rule

B. Summary of the Major Provisions of the Proposed Rule
C. Legal Authority
D. Costs and Benefits
II. Table of Abbreviations/Commonly Used Acronyms in This Document
III. Background
A. Need for the Regulation
B. FDA's Current Regulatory Framework
IV. Legal Authority
V. Description of the Proposed Rule
VI. Proposed Effective and/or Compliance Dates
VII. Economic Analysis of Impacts
VIII. Analysis of Environmental Impact
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. Consultation and Coordination With Indian Tribal Governments
XII. References

I. Executive Summary

A. Purpose of the Proposed Rule

We propose to amend the allowable levels for fluoride in bottled water to which fluoride is added, to be consistent with the updated recommendation by the PHS on the optimal fluoride concentration in community water systems that add fluoride for the prevention of dental caries.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule would revise the quality standard for bottled water (found in § 165.110(b) (21 CFR 165.110(b)) to set the allowable level for fluoride at 0.7 mg/L in domestically packaged and imported bottled water to which fluoride has been added.

C. Legal Authority

We are proposing to update the quality standard for bottled water, as set forth in this proposed rule, consistent with our authority in sections 401, 403, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341, 343, and 371). We discuss our legal authority in greater detail in section IV.

D. Costs and Benefits

The proposed rule, if finalized, would revise the quality standard regulations so that the allowable level for fluoride is 0.7 mg/L in bottled water to which fluoride has been added, to be consistent with the updated PHS recommendation on the optimal level of fluoride in community water systems that add fluoride for the prevention of dental caries. There would be one-time costs to learn the rule and one-time costs to verify the fluoride level after adjustment of the manufacturing process for bottled water manufacturers that choose to add fluoride to their products. The one-time costs range between $129,802.42 and $224,554.41. When discounted at seven percent over 10 years, the annualized costs range from $18,480.94 and $31,971.50. When discounted at three percent over 10 years the annualized costs range from $15,216.80 and $26,324.63.

II. Table of Abbreviations and Acronyms Commonly Used in This Document

Abbreviation/ acronym	What it means
EO	Executive Order.
FDA	Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
HHS	Department of Health and Human Services.
IBWA	International Bottled Water Association.
PHS	U.S. Public Health Service.

III. Background

A. Need for the Regulation

In 1973, FDA established standards of quality for bottled water, including allowable levels for fluoride, based on the PHS's 1962 Drinking Water Standards (38 FR 32558, November 26, 1973).

In adopting the 1962 PHS drinking water standard for fluoride, FDA concluded that the addition of fluoride to bottled water should be permitted to be consistent with the policy of allowing community water fluoridation (38 FR 32558 at 32561, November 26, 1973).

In 2015, the PHS updated and replaced its 1962 Drinking Water Standards related to community water fluoridation and recommended an optimal fluoride concentration of 0.7 mg/L. This recommendation is published in a **Federal Register** notice entitled ''Public Health Service Recommendation for Fluoride Concentration in Drinking Water for Prevention of Dental Caries'' (80 FR 24936, May 1, 2015). In a 2011 notice proposing the revised fluoride recommendation, the Department of Health and Human Services (HHS) explained that the proposed update was based on the following information: (1) Community water fluoridation is the most cost-effective method of delivering fluoride for the prevention of tooth decay; (2) in addition to drinking water, other sources of fluoride exposure have contributed to the prevention of dental caries and an increase in dental fluorosis prevalence; (3) significant caries prevention benefits can be achieved and risk of fluorosis can be reduced at 0.7 mg/L, the lowest concentration in the range of the then-current PHS recommendation; and (4) recent data do not show a convincing relationship between fluid intake and ambient air temperature and, therefore, there is no need for different recommendations for water fluoride concentrations in different temperature zones (76 FR 2383 at 2386, January 13, 2011).

FDA concludes that the basis for PHS' updated recommendation of optimum fluoridation level of 0.7 mg/L in community water is a sound public health measure that should also apply to bottled water. Because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for community water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. For example, per capita consumption of bottled water in the U.S. increased from 29 gallons in 2007 to 42.1 gallons in 2017 (Ref. 1).

Therefore, FDA believes the allowable levels for fluoride in bottled water to which fluoride is added based on the PHS's 1962 Drinking Water Standards are outdated given the 2015 PHS updated recommendation (80 FR 24936, May 1, 2015). A regulation is needed to revise the FDA quality standard regulations so that the allowable level for fluoride is 0.7 mg/L in bottled water to which fluoride has been added. This level would be consistent with the updated PHS recommendation on the optimal level of fluoride in community water systems that add fluoride.

B. FDA's Current Regulatory Framework

Under the quality standard regulations for bottled water (§ 165.110(b)), we set different allowable levels for fluoride in bottled water depending on whether the water is bottled domestically or is imported, as well as on whether the fluoride in the bottled water is present in the source water or is added by the manufacturer. If a manufacturer adds fluoride to bottled water, then the allowable level for fluoride is governed by the regulation that applies to bottled water to which fluoride is added, regardless of whether some of the fluoride was present in the source water.

For bottled water that is packaged in the United States, we described two product types and for each established a range for the allowable levels for fluoride based on the annual average maximum daily air temperatures at the location where the bottled water is sold at retail. These temperature-related allowable levels were based on early data that suggested the amount of water (and consequently the amount of

fluoride) ingested was influenced primarily by air temperature (38 FR 32558 at 32561). One range (1.4 to 2.4 mg/L) pertains to bottled water to which fluoride is not added, and the other range (0.8 to 1.7 mg/L) pertains to bottled water to which fluoride is added. For imported bottled water, our standards are not temperature-dependent: There is a single allowable level for fluoride in bottled water to which fluoride is not added (1.4 mg/L), and a single allowable level for fluoride in bottled water to which fluoride is added (0.8 mg/L). When establishing the current allowable levels for fluoride, we explained that manufacturers of imported bottled water do not usually have direct control of the retail sale of their product. Therefore, by setting the allowable levels for imported bottled water at the lowest concentration in the range for each type of domestically bottled water (*i.e.,* 1.4 mg/L for bottled water with no added fluoride and 0.8 mg/L for bottled water with added fluoride), imported bottled water may be sold in any location without exceeding the allowable fluoride levels of the drinking water standard (39 FR 32558 at 32561, November 26, 1973).

On April 27, 2015, we issued a letter to industry recommending, based on the updated PHS recommendation, that bottled water manufacturers not add fluoride to bottled water at concentrations greater than a final concentration of 0.7 mg/L (Ref. 2). In our letter, we also stated our intent to revise the allowable levels for fluoride in bottled water to which fluoride has been added to be consistent with the updated PHS recommendation. We did not receive any objections to the letter.

IV. Legal Authority

We are proposing to update the quality standard establishing the allowable levels for fluoride in bottled water to which fluoride has been added, as set forth in this proposed rule, consistent with our authority in sections 401, 403, and 701(a) of the FD&C Act.

Section 401 of the FD&C Act directs the Secretary of HHS (the Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers.

Under section 403(h)(1) of the FD&C Act, a food is misbranded if it purports to be or is represented as a food for which a standard of quality has been prescribed by regulations under section 401, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

Under section 701(a) of the FD&C Act, we may issue regulations for the efficient enforcement of the FD&C Act to ''effectuate a congressional objective expressed elsewhere in the Act'' (*Association of American Physicians and Surgeons, Inc.* v. *FDA,* 226 F. Supp. 2d 204 (D.D.C. 2002) (citing *Pharm. Mfrs. Ass'n* v. *FDA,* 484 F. Supp. 1179, 1183 (D. Del. 1980)). Updating this allowable level for fluoride in bottled water to be consistent with the updated PHS recommendation would help effectuate the congressional objective expressed in sections 401 and 403 of the FD&C Act.

V. Description of the Proposed Rule

We propose to revise the bottled water quality standard (§§ 165.110(b)(4)(ii)(C) and (D)) to be consistent with the updated PHS recommendation (80 FR 24936, May 1, 2015) by setting 0.7 mg/L as the allowable level for fluoride in bottled water to which fluoride is added. In addition, consistent with the updated PHS recommendation, we also propose to remove references to annual averages of maximum daily air temperatures in the current § 165.110(b)(4)(ii)(C), table 2; as discussed in the updated PHS recommendation, data do not show a convincing relationship between fluid intake and ambient air temperature (76 FR 2383 at 2386).

Therefore, the proposed rule would revise § 165.110(b)(4)(ii)(C) to specify bottled water packaged in the United States to which fluoride is added must not contain fluoride in excess of 0.7 mg/L. The proposed rule would revise § 165.110(b)(4)(ii)(C) by removing Table 2 and language pertaining to setting fluoride levels based on annual averages of maximum daily air temperatures. The proposed rule also would revise § 165.110(b)(4)(ii)(D) to specify that imported bottled water to which fluoride is added must not contain fluoride in excess of 0.7 mg/L. The proposed rule would not affect the allowable levels for fluoride in bottled water to which fluoride is not added by the manufacturer (but which may contain fluoride from its source water, specified in § 165.110(b)(4)(ii)(A) and (B)).

VI. Proposed Effective and/or Compliance Date(s)

We intend that any final rule resulting from this rulemaking would become effective 60 days after the date of the final rule's publication in the **Federal Register**. According to the International Bottled Water Association (IBWA), many of its member companies in the United States have already adjusted fluoride addition to obtain the 0.7 mg/L fluoride in their finished bottled water in response to the updated PHS recommendation and FDA's April 27, 2015, letter (Ref. 3). Therefore, we propose a compliance date 120 days after the effective date. We believe that the time frame for the compliance date is sufficient for bottled water manufactures to learn the rule and adjust their processes to bring their products into compliance with the new requirement.

VII. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order (E.O.) 12866, E.O. 13563, E.O. 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). E.O. 12866 and E.O. 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). E.O. 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule is a significant regulatory action as defined by E.O. 12866. This proposed rule is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because updating the standards of the allowable level for fluoride in bottled water to which fluoride has been added specified in this proposed rule would not significantly increase costs to bottled water manufacturers, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more

(adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 4) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

Summary of Costs and Benefits

The proposed rule would revise the standard for the allowable level for fluoride to 0.7 mg/L in bottled water to which fluoride has been added, a level consistent with the updated U.S. Public Health Service (PHS) recommendations for the optimal level of fluoride in community water systems to prevent dental caries (tooth decay). There may be some health benefits from revising this standard for fluoride in bottled water. As stated in the 2011 Department of Health and Human Services (HHS) notice proposing the revised recommended fluoride concentration, available data suggest that a concentration of 0.7 mg/L provides an optimal balance between the prevention of dental caries and the risk of dental fluorosis (76 FR 2383 at 2386). Moreover, this may reduce any unnecessary confusion on the part of consumers from having the standard for fluoride added to bottled water differ from the PHS recommendations for community water fluoridation.

There would be one-time costs to learn the rule for all bottled water manufacturers and one-time costs to verify the fluoride level after adjustment of the manufacturing process for bottled water manufacturers that choose to add fluoride to their product. The one-time costs range between $129,802.42 and $224,554.41. When discounted at seven percent over 10 years, the annualized costs range from $18,480.94 and $31,971.50. When discounted at three percent over 10 years the annualized costs range from $15,216.80 and $26,324.63. In Table 1, we provide the Regulatory Information Service Center and Office of Information and Regulatory Affairs Consolidated Information System accounting information on the annualized costs and benefits of the proposed rule.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	.....	.....	.....	.....	7 3		
Annualized Quantified	.....	.....	.....	.....	7 3		
Qualitative	Update standard to make consistent with current PHS recommendations.						
Costs:							
Annualized Monetized $millions/year	$0.025 $0.021	$0.018 $0.015	$0.032 $0.026	2017 2017	7 3	10 10	
Annualized Quantified	.....	.....	.....	.....	7 3		
Qualitative.							
Transfers:							
Federal Annualized Monetized $millions/year	.....	.....	.....	.....	7 3		
	From:			To:			
Other Annualized Monetized $millions/year	.....	.....	.....	.....	7 3		
	From:			To:			

Effects:
State, Local or Tribal Government: No effect.
Small Business: No effect.
Wages: No estimated effect.
Growth: No estimated effect.

In table 2 we show a summary of the costs, cost savings and net costs. This proposed rule, if finalized, is considered an E.O. 13771 regulatory action.

TABLE 2—E.O. 13771 SUMMARY (IN $ MILLIONS 2016 DOLLARS) OVER AN INFINITE TIME HORIZON

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Present Value of Costs	$0.177	$0.130	$0.225	$0.177	$0.130	$0.225
Present Value of Cost Savings	0	0	0	0	0	0
Present Value of Net Costs	0.177	0.130	0.225	0.177	0.130	0.225

TABLE 2—E.O. 13771 SUMMARY (IN $ MILLIONS 2016 DOLLARS) OVER AN INFINITE TIME HORIZON—Continued

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Annualized Costs	0.0124	0.0091	0.0157	0.0053	0.0039	0.0067
Annualized Cost Savings	0	0	0	0	0	0
Annualized Net Costs	0.0124	0.0091	0.0157	0.0053	0.0039	0.0067

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13132. We have determined that this rule has federalism impacts as it amends the standard of quality regulations for bottled water. The existing standard of quality is not new and already preempts state laws because it is within the scope of section 403A of the FD&C Act, an express preemption provision.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13175. We have tentatively determined that the rule does not contain policies that would 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. We invite comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Rodwan, J.G. Jr., ''Bottled Water. U.S. and International Developments & Statistics,'' (*https://www.bottledwater.org/public/BMC2017_BWR_StatsArticle.pdf*), *Bottled Water Reporter,* pp. 12–20, July/August, 2018.
2. FDA, ''Letter to Manufacturers, Distributors, or Importers of Bottled Water with an Update on Fluoride Added to Bottled Water,'' (*https://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatory information/bottledwater carbonatedsoftdrinks/ucm444373.htm*), April 27, 2015
3. FDA Memorandum, ''Teleconference Related to Fluoride in Bottled Water,'' 2016.
4. FDA, ''Proposed Rule to Revise the Allowable Level of Fluoride in Bottled Water to which Fluoride Has Been Added, Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' (*https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*).

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

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

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

■ 2. Revise § 165.110(b)(4)(ii)(C) and (D) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) Bottled water packaged in the United States to which fluoride is added must not contain fluoride in excess of 0.7 milligram per liter.

(D) Imported bottled water to which fluoride is added must not contain fluoride in excess of 0.7 milligram per liter.

* * * * *

Dated: March 26, 2019.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2019–06201 Filed 4–2–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH–260–FOR; Docket ID: OSM–2018–0001; S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Ohio regulatory program (the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Ohio seeks to revise its program to require permit applications to list all unabated ''violation notices,'' as that term is defined in the approved program. This change is necessary to be consistent with the Federal regulations. This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Daylight Time (e.d.t.), May 3, 2019. If requested, we will hold a public hearing on the amendment on April 29, 2019. We will accept requests

to speak at a hearing until 4:00 p.m., e.d.t. on April 18, 2019.

ADDRESSES: You may submit comments, identified by SATS No. OH–260–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned the Docket ID OSM–2018–0001. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Mr. Lanny E. Erdos, Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H2, Telephone: (614) 265–6893, Email: *lanny.erdos@dnr.state.oh.us.*

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center, Pittsburgh, Pa. 15220. Telephone: (412) 937–2827, email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, State Regulatory Program Approval; and 935.11, Conditions of State Regulatory Program Approval; and 935.15, Approval of Ohio Regulatory Program Amendments.

II. Description of the Proposed Amendment

By letter dated November 20, 2017 (Administrative Record No. OH–2196–01), Ohio sent OSMRE an amendment that includes statutory changes to its Ohio Revised Code (ORC) as well as regulatory changes to its Ohio Administrative Code (OAC) under SMCRA (30 U.S.C. 1235). Ohio is submitting these changes in response to a required amendment found at 30 CFR 935.16 (a). In an October 19, 2015 **Federal Register** notice (80 FR 63125), OSRME required Ohio to amend its program to require permit applications to list all unabated ''violation notices,'' as that term is defined in the Ohio approved program. This change is necessary to be consistent with the Federal regulation at § 778.14(c)

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on April 18, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public

hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a state submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018.

Thomas D. Shope,

Regional Director.

Editorial note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

[FR Doc. 2019–06492 Filed 4–2–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–168–FOR; Docket ID: OSM–2017–0010; S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania seeks to revise its regulatory program regulations that involve remining operations with pollutional discharges. This document gives the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Eastern Standard Time (e.s.t.), May 3, 2019. If requested, we will hold a public hearing on the amendment on April 29, 2019. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on April 18, 2019.

ADDRESSES: You may submit comments, identified by SATS No. PA–168–FOR; Docket ID: OSM–2017–0010, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220.
- *Fax No.:* 412–937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned the Docket ID OSM–2016–0012. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, PA 17105–8461, Telephone: (717) 787–5015, Email: *tcallaghan@pa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including

the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register**, (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated July 26, 2017 (Administrative Record No. PA 901.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the Pennsylvania regulatory program regulations that were adopted by the Commonwealth on September 3, 2016 to avoid concerns raised in regards to 30 CFR 732.17(g). These changes pertain to remining operations with pollutional discharges at 25 Pennsylvania Code. The following chapters are revised: Chapter 87, Subchapter F, (relating to minimum requirements for remining areas with pollutional discharges from bituminous surface coal mines); Chapter 88, Subchapter G (relating to minimum requirements for remining areas with pollutional discharges from anthracite surface mining activities and anthracite bank removal and reclamation activities), and Chapter 90, Subchapter F (relating to coal refuse disposal activities on areas with pre-existing pollutional discharges).

The proposed regulatory changes within these chapters involve statistical sampling for determining baseline pollutant levels and include changes to definitions; development, content, notification, and reporting requirements involving the abatement plan; compliance monitoring, sampling, and discharge treatment requirements; and effluent limitations. Other changes include renumbering, formatting, and substitutions of more specific references.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 18, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018.

Thomas D. Shope,

Regional Director, Appalachian Region.

Editorial Note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

[FR Doc. 2019–06490 Filed 4–2–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–167–FOR; Docket ID: OSM–2017–0009 S1D1S SS08011000 SX064A000 19S180110; S2D2S SS08011000 SX064A000 19XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania seeks to revise its regulatory program to include statutory provisions that permit reclamation bond coverage for no cost to surface mining operators who remine and then reclaim the area with biofuel crops and establish a Land Reclamation Financial Guarantee program that provides for land reclamation financial guarantees as a form of reclamation bond. Implementing regulations are also included. This document gives the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), May 3, 2019. If requested, we will hold a public hearing on the amendment on April 29, 2019. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on April 18, 2019.

ADDRESSES: You may submit comments, identified by SATS No. PA–167–FOR; Docket ID: OSM–2017–0009, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned the Docket ID OSM–2017–0009. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Division or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, PA 17105–8461, Telephone: (717) 787–5015, Email: *tcallaghan@pa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find additional background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register**, (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated July 26, 2017 (Administrative Record No. PA 900.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment to the Pennsylvania program includes two statutory changes to the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA, 52 P.S. §§ 1396.1–1396.31); Act 95 of 2012 relating to biofuels incentives for remining sites; and Act 157 of 2012, relating to financial guarantees and funding for reclamation obligations. Implementing regulations at 25 Pennsylvania Code (Pa Code) Chapter 86, Surface and Underground Coal Mining, which were adopted in 2015, are also included.

Statutory Changes: Mining Permit and Bioenergy Crop Bonding, Act 95 of 2012: An amendment to the PA SMCRA, House bill (H.B.) 608, entitled Mining Permit and Bioenergy Crop Bonding, was enacted on July 5, 2012, Public Law 918, No. 95 and became effective September 3, 2012. The new statutory provisions encourage and promote the use of bioenergy crops as part of the reclamation plan that addresses revegetation of the lands affected by surface mining activities. The provisions also provide sum-certain financial guarantees for this purpose.

Statutory Changes: Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees, Act 157 of 2012: An amendment to the PA SMCRA, H.B. 1813, entitled Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees (LRFG), was enacted on October 24, 2012, Public Law 1276, No. 157 and became effective December 23, 2012. The new statutory provisions incorporate a land reclamation financial guarantee as a form of bond or collateral that may be available to the operator for the reclamation of land affected by surface mining operations. The financial guarantee is provided by the

Commonwealth to qualified operators to satisfy the required bond obligation. The LRFG program provides for the assessment and collection of premiums from operators for such guarantees in an amount sufficient to assure the financial stability of the financial guarantee program and to cover the Commonwealth's cost to administer the program. This program replaces the Commonwealth's Conversion Assistance Program (CAP) of 2001. The new statutory provisions address site and operator eligibility, the establishment of an account for this purpose, the transfer of funds from the CAP program to the LRFG account, the authorizations to transfer funds from the LRFG account into the Remining Financial Assurance Fund and the Reclamation Fee Operation and Maintenance account, interest earned on the account, conditions for dissolution of the program, and management of the account.

Regulatory Changes: 25 Pa Code: The Pennsylvania Environmental Quality Board adopted changes to mining regulations at 25 Pennsylvania Code on April 21, 2015, and the changes became effective on August 22, 2015. These changes include the addition of sections 86.162b and 86.162c, which implement the statutory changes resulting from Act 95 of 2012, Mining Permit and Bioenergy Crop Bonding, and Act 157 of 2012, Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees. In addition, chapters 86–90 were amended to correct citations to the PA SMCRA to account for the addition of section 19.2 of the SMCRA, which was added by Act 157, to correct other citation errors, and to address other minor changes.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 18, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018.

Thomas D. Shope,

Regional Director, Appalachian Region.

Editorial note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

[FR Doc. 2019–06489 Filed 4–2–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–124–FOR; Docket ID: OSM–2016–0012; S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act (SMCRA or the Act). On June 14, 2016, West Virginia Department of Environmental Protection (WVDEP) submitted a program amendment to OSMRE that includes regulatory revisions, authorized under the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), relating to bonding requirements for operations seeking permit renewals, topsoil, inactive status, and contemporaneous reclamation. This document gives the times and locations that the West Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Eastern Daylight Time (e.d.t.), May 3, 2019. If requested, we will hold a public hearing on the amendment on April 29, 2019. We will accept requests to speak at a hearing until 4 p.m., e.d.t. on April 18, 2019.

ADDRESSES: You may submit comments, identified by WV–124–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East Charleston, West Virginia 25301.
- *Federal eRulemaking Portal:* The amendment has been assigned the Docket ID OSM–2016–0012. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Charleston Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Email: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Morgantown Area Office, Office of Surface Mining Reclamation and Enforcement, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only)

Beckley Area Office, Office of Surface Mining Reclamation and Enforcement, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Email: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description and Submission of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning the West Virginia program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Proposed Amendment

By letter dated June 14, 2016, and received by OSMRE on June 21, 2016 (Administrative Record No. WV–1606), WVDEP submitted an amendment to its permanent regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of regulatory revisions to West Virginia's Surface Mining Reclamation Regulations at Code of State Regulations (CSR) Title 38, Series 2. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Senate Bill No. 357 (SB 357) was adopted by the West Virginia Legislature on March 3, 2015, and was approved by the Governor on March 12, 2015. On March 25, 2015, WVDEP notified OSMRE of the passage of SB 357 (Administrative Record No. WV–1604). Senate Bill 357 authorized WVDEP to promulgate several revisions to its Surface Mining Reclamation Regulations. The bill amended West Virginia Code Sections 22–3–13 and 19 and authorized WVDEP to promulgate revisions to its contemporaneous reclamation and inactive status regulations.

Committee Substitute for House Bill 117 (HB 117) was passed by the West Virginia Legislature on June 2, 2016. With the passage of HB 117, the Legislature authorized a legislative rule filed by WVDEP in the State Register on July 27, 2015, that includes revisions regarding contemporaneous reclamation, inactive status and topsoil. In addition, the Legislature authorized amendments regarding bonding requirements for permit renewals and incremental bonding for permit renewals. In accordance with HB 117, WVDEP filed revised regulations with the Secretary of State on June 10, 2016.

1. CSR 38–2–3.27—Permit Renewals

WVDEP proposes to amend its regulations at CSR 38–2–3.27. As proposed, once an operation has received a waiver of the permit renewal requirement, it is exempt from the restriction contained in paragraph 11.4.a.2 regarding changing from full permit bonding to incremental bonding, and the operation may submit a bonding revision to the Secretary for approval.

This proposed State revision falls under the Federal provisions at 30 CFR 800.11 and section 509 of SMCRA.

2. CSR 38–2–7.6—Forest land

WVDEP is proposing to amend its Forest land requirements at subsection 7.6.c, Soil placement and Substitute

material, by replacing the word topsoil with soil before the word substitute and after the word volume in subparagraph c.2, adding soil substitute after the words soil in subparagraph c.3, and deleting the word soil after the words uniform and minimum in subparagraph 7.6.d.1 relating to Liming and Fertilizing.

These proposed revisions fall under the Federal provisions at 30 CFR 779.21, 780.18, 816/817.71(e), 816/817.22(b), 816/817.22(d), 816/817.71(e) and 816/817.102(a) and section 515(b)(5) and (b)(6) of SMCRA.

3. CSR 38–2–7.7—Wildlife

WVDEP is proposing to amend its wildlife requirements at subsection 7.7.c, Soil placement and Substitute material, by replacing the word topsoil with soil before the word substitute and after the word volume in subparagraph c.2, adding soil substitute after the words soil in subparagraph c.3, and deleting the word soil after the words uniform and minimum in subparagraph 7.7.d.1 relating to Liming and Fertilizing.

These proposed revisions fall under the Federal provisions at 30 CFR 779.21, 780.18, 816/817.71(e), 816/817.22(b), 816/817.22(d), 816/817.71(e) and 816/817.102(a) and section 515(b)(5) and (b)(6) of SMCRA.

4. CSR 38–2–11.4.a.2—Incremental Bonding

The State is proposing to amend its regulations at CSR 38–2–11.4.a.2. As amended, a proviso was added to this subparagraph which provides that operations that have received a waiver of the permit renewal requirements are exempt, and the operation [operator] may submit a bonding revision to the Secretary for approval.

This proposed State revision falls under the Federal provisions at 30 CFR 800.11 and section 509 of SMCRA.

5. CSR 38–2–14.3—Topsoil

This proposed amendment addresses a conflicting use and misinterpretation of the terms ''topsoil'', ''topsoil substitute'', ''soil'', and ''soil substitute'' that was apparent in a 30 CFR part 733 review of a petition to OSMRE dated June 24, 2013 (Administrative Record Number WV–1609). The proposed topsoil revisions include a reference, in Subsection 14.3.a, to the State's definition of topsoil, which is already part of the approved State program. This paragraph is also amended to provide that where the topsoil is less than six inches thick, topsoil and unconsolidated materials below it may be removed and treated, in combination, as topsoil. Subsection 14.3.c. would allow the use of substitutes where it can be shown that the existing topsoil is inadequate in quality or quantity to support and maintain the approved postmining land use.

These proposed State revisions fall under the Federal provisions at 30 CFR 816.22 and 817.22 and subsections 515(b)(5) and (b)(6) of SMCRA.

6. CSR 38–2–14.11—Inactive Status

West Virginia seeks to revise its regulations at CSR 38–2–14.11 by addressing and clarifying the time limits including inactive status (renewable), bonding requirements, and procedure for inactive status. The proposed revisions to the State's inactive status requirements include revisions to subparagraphs 14.11.a.6, d, d.1., d.2., d.3, e, f, g, and h, and the deletion of subparagraph 14.11.c in its entirety and portions of subparagraph 14.11.d. The changes include the proposed elimination of public notice and opportunity for public comment on an application for inactive status, as well as a proposal to change the period within which inactive operations must be capable of restarting from 60 days to 180 days and not allowing the total time for inactive status to exceed three years. Finally, full cost reclamation bonds for permits on inactive status will not have to remain in effect for the life of the operation.

These proposed State revisions fall under the Federal provisions at 30 CFR 816.131 and 817.131 and sections 501, 503, 509, 510, 515 and 516 of SMCRA.

7. CSR 38–2–14.15—Contemporaneous Reclamation, Backfilling and Grading, Excess Spoil Disposal, Variance

West Virginia also seeks to revise program requirements at CSR 38–2–14.15 by addressing and clarifying time, distance and acreage requirements for contemporaneous reclamation standards. It also clarifies the bonding requirements for a contemporaneous reclamation variance and a procedure to remove it once the variance is no longer needed.

WVDEP proposes to revise subparagraph 14.15.b.1 to eliminate the maximum exceeding acreage requirement of 35 acres, provided that the requirements stipulated in subparagraphs 14.15.d and 14.15.c.2 are met. Subparagraph 14.15.b.3 is proposed to be revised to extend the timeframe within which grading and backfilling is to be completed from 35 to 60 days and to increase the distance for the same activity from one thousand (1000) feet to one thousand five hundred (1500) feet.

Subparagraph 14.15.b.4 contains a revision to clarify for a stair step mining approach with multiple steps that the subsequent cut of the underlying seam occurs within one hundred eighty (180) days from the initial pit excavation with backfilling and regrading to follow within one hundred eighty (180) days of removal of the lowest seam in the operation.

Subparagraphs 14.15.b.5, 14.15.b6.A and 14.15.b.6.B.2 are proposed to change similar language as addressed in 14.15.b.4. The proposed revision to subparagraph 14.15.b.6.B.1 seeks to eliminate redundancy, as this stipulation is already addressed in subparagraph 14.15.b.6.A.

The proposed State revisions regarding contemporaneous reclamation fall under the Federal provisions at 30 CFR 816.100, 816.101, 816.102, and subsections 515(b)(16), (c), (d) and (e) of SMCRA.

The proposed State revisions regarding excess spoil disposal fall under the Federal provisions at 30 CFR 816.71, 816.100, 816.101, 816.102 and subsections 515(b)(16), and (b)(22) of SMCRA.

The proposed State revisions regarding variances fall under the Federal provisions at 30 CFR 785.14, 785.15, 785.16, 816.100, 816.101, 816.102, and subsections 515(b)(16), (c), (d) and (e) of SMCRA.

8. CSR 38–2–22.3.t.4—Coal Refuse—Abandonment Plan

WVDEP proposes to delete the word ''topsoiling'' near the end of this requirement. Instead of topsoiling refuse, an operator will cover fine refuse in an impoundment with coarse refuse or other fill material prior to it being covered with the non-toxic and non-combustible material.

The proposed State revision regarding coal refuse disposal abandonment plans fall under the Federal provisions at 30 CFR 780.25(d), 784.16(d), 816/817.81, 816/817.83, and 816/817.84, and subsections 515(b)(11), (13), and (f) and 516(b)(5) of SMCRA.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the

reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on April 18, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

V. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 12, 2018.

Thomas D. Shope,

Regional Director, Appalachian Region.

Editorial Note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

[FR Doc. 2019–06494 Filed 4–2–19; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 20, 27 and 90

[WT Docket No. 17–200; FCC 19–18]

Commission Proposes To Reconfigure the 900 MHz Band To Facilitate Broadband Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes and seeks comment on facilitating broadband deployment in the 896–901/935–940 MHz band (900 MHz band) currently configured for narrowband operations. Specifically, the Commission proposes to realign the band to create a paired ⅔ megahertz broadband segment, licensed on a geographic basis, while reserving two remaining segments for continued narrowband operations. The Commission proposes to authorize a market-driven voluntary exchange process that would allow existing licensees in the band to mutually agree to a plan for clearing of the broadband segment by relocating site-based incumbents to narrowband spectrum. The Commission also seeks comment on two other transition methods—an auction of overlay licenses and an incentive auction, options that might be needed to effectuate 900 MHz band realignment in certain markets. This proposed action is consistent with the Commission's ongoing recent efforts to increase access to flexible-use spectrum.

DATES: Interested parties may file comments on or before May 3, 2019, and reply comments on or before June 3, 2019.

ADDRESSES: You may submit comments, identified by WT Docket No. 17–200, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stana Kimball, *Stanislava.Kimball@fcc.gov,* of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–1306.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (*NPRM*) in WT Docket No. 17–200, FCC 19–18, released on March 14, 2019. The complete text of the *NPRM* is available for viewing via the Commission's ECFS website by entering the docket number, WT Docket No. 17–200. The complete text of the *NPRM* is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563.

Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Comment and Reply Comment Filing Instructions

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Parties should only file in GN Docket No. 17–258. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Presentations

The proceeding this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200 *et seq.*). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules. We find that all *ex parte* presentations made by NTIA or Department of Defense representatives are exempt under our exemption for presentations by federal agencies sharing jurisdiction with the Commission (*see* 47 CFR 1.1204(a)(5)).

I. Notice of Proposed Rulemaking

1. The *NPRM* proposes to realign the 900 MHz band [1] to enable broadband deployment, and seeks comment on how to realign the band, how to conduct a transition, and the technical rules needed to make the realignment a reality. The *NPRM* proposes to create a ⅔ megahertz segment broadband segment and to reserve the remainder of the 900 MHz band for continued narrowband operations. The Commission believes this proposal furthers important goals of the Communications Act of 1934, as amended (Communications Act), including improving the efficiency of spectrum use, and seeks comment on this view.

A. Band Realignment To Create Broadband Licenses

2. The *NPRM* propose a 3/3 megahertz broadband segment. The Commission anticipates that paired three megahertz blocks would be most suitable to create a viable broadband service in this band, and that paired 1.5 and .5 megahertz blocks could provide enough spectrum for 900 MHz narrowband operations. Three megahertz blocks are supported by wireless technical standards such as Long Term Evolution (LTE), and they are also favored by commenters. The Commission's goal is to open the 900 MHz band for additional uses that will facilitate increased efficiency and encourage innovation, while continuing to accommodate narrowband incumbents. The *NPRM* seeks comment on this proposed approach, including its costs and benefits.

3. To provide additional flexibility for the deployment of broadband services

[1] The 900 MHz band consists of 399 narrowband (12.5 kilohertz) frequency pairs grouped into 10-channel blocks that alternate between Specialized Mobile Radio (SMR) blocks that are geographically licensed by Major Trading Area (MTA) and Business/Industrial Land Transportation (B/ILT) blocks in which channels are assigned on a site-by-site basis.

in the 900 MHz band, the *NPRM* proposes to replace the Land Mobile Service allocation in the 900 MHz band with a Mobile Except Aeronautical Mobile Service allocation on a co-primary basis with the Fixed Service, consistent with the allocations in the 890–902 MHz and 928–942 MHz bands in Region 2 of the International Table of Frequency Allocations.

4. The *NPRM* proposes to designate 897.5–900.5 MHz/936.5–939.5 MHz as the broadband segment, leaving two separate narrowband segments: A 1.5/1.5 megahertz segment (896–897.5/935–936.5 MHz) below the broadband segment and a .5/.5 megahertz segment (900.5–901/939.5–940 MHz) above the broadband segment.[2] This arrangement provides 1.5 megahertz of separation between the broadband segment and the 894–896 MHz Air-Ground Radiotelephone Service/932–935 MHz fixed microwave systems spectrum, and 500 kilohertz of separation between the broadband segment and the 901–902/940–941 MHz Narrowband Personal Communications Service spectrum.

5. Under the Commission's proposal, in the markets that are transitioned to broadband use through one or more of the mechanisms described in the *NPRM,* the 896–897.5/935–936.5 MHz and 900.5–901/939.5–940 MHz bands would no longer have a distinction between B/ILT and SMR blocks, but instead they would be designated as the narrowband segment available for site-based operations. The *NPRM* seeks comment on the rule modifications that may be necessary to facilitate band realignment and the creation of separate narrowband and broadband segments. Specifically, how should the Commission grant access to the narrowband segment and determine eligibility for narrowband segment licenses? To what extent will the Commission's interference protection criteria need to be modified to account for the existence of incumbent users and new licensed operations in the narrowband segment? The Commission also seeks comment on whether any necessary rule changes may vary depending on the specific transition mechanisms that the Commission may implement.

6. The *NPRM* further seeks comment on redesignating the entire band for broadband operation. It seeks specific comment on whether the Commission should take any action to facilitate 5/5 megahertz broadband operation on a nationwide basis or only in particular areas, such as where a single licensee controls all or almost all of the band or where there are very few narrowband users and little demand as demonstrated by lack of licensing activity. What additional rule changes, if any, would we need to make to effectuate such a proposal? The Commission asks commenters to also discuss and quantify the costs and benefits of this or any other alternative approaches, such as a 1.4/1.4 megahertz broadband channel coupled with larger protection bands between broadband and narrowband operations.

7. Consistent with the Commission's approach in several other bands used to provide fixed and mobile services, the *NPRM* proposes to license the broadband segment on a geographic area basis and seeks comment on the appropriate geographic licensing area for the broadband segment. Due to wide variations in levels of incumbent use of 900 MHz band across geographic areas, the Commission seeks comment on issuing broadband licenses on a county-by-county basis and asks whether to base such a county licensing scheme on 2017 county boundaries, the most recent county boundaries currently available through the Census Bureau, as used in the 3.5 GHz band. As an alternative, the Commission seeks comment on issuing broadband licenses over a larger geography.

8. The *NPRM* asks commenters to address the most suitable license area for 900 MHz band broadband licenses, and explain the costs and benefits of various approaches, especially with respect to rural areas. Would larger geographic licenses limit the ability of electric utilities or other non-traditional stakeholders in acquiring such licenses? Conversely, are there additional reasons that make larger geographic areas better suited for the broadband license? The Commission asks stakeholders to also comment on what license size would best facilitate relocation of incumbent users.

B. Transition to the New Band Alignment

9. The *NPRM* first proposes to authorize a market-driven, voluntary exchange process that would allow existing licensees to come together and mutually agree to a plan for relocating site-based incumbents and transitioning the band for broadband use. The Commission recognizes, however, that a voluntary process may not be successful in all markets, particularly those with a substantial number of incumbents. Therefore, in order to facilitate a nationwide realignment for broadband uses, the Commission also seeks comments on the two other methods of transitioning the band to broadband use: an auction of overlay licenses and an incentive auction. The *NPRM* seeks comment on the costs and benefits of our proposal, any alternatives, and their combinations.

1. A Market-Driven Voluntary Exchange Process

10. The *NPRM* proposes to initially rely on a market-driven approach through which 900 MHz licensees may engage in voluntary exchange mechanisms to facilitate clearing of the broadband segment. This approach seeks to take advantage of the speed and efficiency of voluntary realignment through private agreements between incumbents. The *NPRM* proposes to give site-based incumbents the opportunity to relocate on a voluntary basis and allow an eligible party to acquire a broadband license on a county-by-county basis in the cleared spectrum.

11. Under this proposal, the Commission would require the prospective broadband licensee to hold the licenses for all 20 geographically-licensed blocks of 900 MHz SMR spectrum in the relevant county. The prospective broadband licensee could then negotiate with site-based incumbents to move narrowband operations out of the broadband segment and agree to clear the spectrum to enable use of 3/3 megahertz of contiguous spectrum. Subject to the restrictions and requirements discussed in this section, the new broadband licensee could then apply for a license to operate on a primary basis in the 3/3 megahertz broadband segment in each county it successfully clears.

12. *Eligibility.* To be eligible for a new 900 MHz broadband license in a given county, the *NPRM* proposes that the applicant must: (1) Hold licenses covering the entire county for all 20 geographically-licensed SMR blocks,[3] (2) reach an agreement to clear from the broadband segment, or demonstrate how it will protect, all covered incumbent licensees, and (3) agree to return to the Commission all 900 MHz licenses for the relevant county, including any site-based B/ILT or SMR licenses. The *NPRM* seeks comment on these eligibility restrictions, including

[2] That is, we propose that the broadband segment be composed of the existing channels with center frequencies from 897.5125/936.5125 MHz (channel 121) to 900.5/939.5 MHz (channel 360). Channels 1–120 and 361–399 would continue to be designated for narrowband operations.

[3] The licensee must hold the rights to all spectrum associated with each of the 20 SMR blocks, *i.e.,* a total of 5 megahertz. Alternatively, the Commission seeks comment on whether to allow a licensee to use any combination of 900 MHz spectrum (*e.g.,* B/ILT and/or SMR) to be eligible for a new broadband license, provided that such spectrum totals at least 5 megahertz and covers the entire county for which it seeks a license.

whether any of the terms should be defined in greater detail. It also seeks comment on any other eligibility restrictions that may be necessary to ensure an efficient realignment process and to limit the amount of spectrum the Commission must license from inventory.

13. In certain markets, the Commission may currently hold some SMR inventory, such that the prospective broadband licensee could not hold all 20 geographically-licensed blocks of SMR spectrum. The *NPRM* seeks comment on how to apply the proposed eligibility restriction in such cases. Should the Commission decline to apply this process where the Commission would need to issue additional spectrum from inventory beyond the 1 megahertz already required to create a 3/3 broadband segment in any market? Or, where some geographic-area SMR licenses remain in Commission inventory, should it require the prospective broadband licensee to hold all the SMR licenses that have been issued, provided that it meets some minimum threshold of licenses? If so, what would be the appropriate minimum threshold to facilitate the voluntary exchange process in such markets while also mitigating the risk of an undue windfall to the prospective broadband licensee?

14. Under this proposal, the prospective broadband licensee must either reach an agreement to clear, or demonstrate how it will provide interference protection to, all covered incumbents relating to the county for which it seeks a 3/3 megahertz broadband license. The *NPRM* proposes to define ''covered incumbents'' as any site-based licensee that is required under current rules to be protected by the placement of a broadband licensee's base station at any location within the county. Under existing 900 MHz co-channel separation requirements, co-channel systems must comply with a minimum spacing criteria of at least 113 kilometers (70 miles) separation distance between base stations. Under the Commission's proposal, the prospective broadband licensee would need to account for all covered incumbents in its Transition Plan by demonstrating one or more of the following: (1) Agreement by covered incumbents to relocate from the broadband segment, (2) protection of covered incumbents through compliance with minimum spacing criteria, and/or (3) protection of covered incumbents through new or existing letters of concurrence agreeing to lesser base station separations. The Commission seeks comment on this approach and asks commenters to discuss the costs and benefits of any alternative approach.

15. Because the Commission's proposal is to implement a process where successful voluntary negotiations in a given market would result in band realignment and issuance of initial broadband licenses without the filing of mutually exclusive applications, the *NPRM* seeks comment on the risks that a prospective broadband licensee would realize an undue windfall in markets where a voluntary exchange is achieved. Should the Commission require the new broadband licensee to offset the increase in value resulting from the creation of a contiguous band segment? Should it require the prospective broadband licensee to compensate the U.S. Treasury for the difference between the market value of the 3/3 megahertz broadband license and the total value of the SMR licenses it relinquishes, plus any costs it incurs to relocate incumbents from the broadband segment? The Commission seeks comment on whether these or any other anti-windfall provisions might be appropriate in this proceeding and how to quantify the public benefits of implementing a voluntary exchange option to repurpose the 900 MHz band for broadband use, in light of any potential windfall that might accrue to incumbents.

16. *Applications.* The *NPRM* proposes that an application seeking a 900 MHz broadband license must include: (1) A certification that the applicant satisfies the eligibility restrictions (Eligibility Certification), and (2) a plan for transitioning the band in the particular county (Transition Plan) that describes the private agreements between the prospective broadband licensee and all covered incumbents. The Commission proposes that the Transition Plan must describe in detail all information and actions necessary to accomplish the realignment, including: (1) The spectrum frequencies within the broadband segment that the prospective broadband licensee seeks from Commission inventory, (2) the rights to all 20 geographically-licensed SMR blocks, and any site-based SMR or B/ILT licenses in the county that the licensee is relinquishing, (3) the applications that the parties to the agreement will file for spectrum in the narrowband segment in order to relocate or repack licensees, (4) a description of how the applicant will provide interference protection to, and/or relocate from the broadband segment, all covered incumbents, and (5) any rule waivers or other actions necessary to implement the agreement.

17. The *NPRM* also seeks comment on whether incumbent site-based licensees would be unduly burdened by the imposition of a mandatory relocation requirement. Would requiring mandatory relocation as a component of this transition mechanism be an effective means of mitigating against holdouts, while also preserving the advantages of a purely voluntary and market-driven approach? Should the Commission limit any mandatory relocation to counties where the prospective broadband licensee holds more than 3 megahertz uplink and 3 megahertz downlink in the 900 MHz band (across the county including both SMR and site-based licenses) and, if so, how should we calculate the site-based spectrum holdings? The Commission seeks comment on the costs and benefits of any approach for addressing the holdout problem.

18. *Procedures.* The *NPRM* proposes to commence the voluntary exchange process by issuing a public notice opening a filing window to accept applications consistent with the proposed eligibility and application requirements. Because the voluntary exchange process is an initial solution that may not result in clearing of a 3/3 broadband segment in all markets, potentially requiring supplemental transition methods, the Commission may ultimately implement an overlay or incentive auction in those areas where the process does not result in realignment of the band. The Commission therefore seeks comment on whether the filing window should be open indefinitely, or whether it should designate some period of time by which any qualifying applications must be filed. Would creating a finite window help to encourage negotiations and curtail holdout problems? If so, what period of time would be sufficient to allow incumbents to complete negotiations and develop an agreement to transition the band? Conversely, if the window is undefined, should the Commission provide notice prior to closing the window in those areas where voluntary transition is not successful? If so, how much prior notice would be sufficient for incumbents with pending negotiations to finalize an agreement and make the necessary filings? The Commission seek comment on these and any other issues relating to the application filing window.

2. An Auction of Overlay Licenses

19. The *NPRM* also seeks comment on whether an auction of overlay 900 MHz broadband licenses, coupled with the right to mandatorily relocate narrowband incumbents in the entire

band, might be a viable alternative method in certain markets to ensure adequate access to broadband spectrum. Under this approach, the Commission would conduct, where appropriate, an auction of a single 3/3 megahertz overlay license in a geographic area (*e.g.,* county or other area which the Commission finds most suitable for this transition method). The winning bidder would be entitled to require incumbents to relocate to narrowband frequencies outside the 3/3 broadband segment, provided it pays for appropriate relocation costs as discussed below. The Commission seeks comment on this alternative approach, particularly the costs and benefits associated with implementation.

20. The *NPRM* also asks and seeks comment on whether it should consider conducting an auction of a single 5/5 megahertz overlay license in each market. Under the auction of either a 3/3 or 5/5 megahertz overlay license approach, the *NPRM* also seeks comment on establishing a framework for compensating relocated incumbents. Should the Commission require that overlay licensees provide mandatorily relocated incumbents with ''comparable facilities,'' as the Commission has required in other bands? Specifically, the Commission seeks comment on the extent to which the rules governing 800 MHz rebanding would be appropriate for relocation in the 900 MHz band, or whether other relocation methodologies are more appropriate.

21. The *NPRM* seeks comment on the appropriate overall time frame for mandatory relocation and how the Commission should proceed after its completion. Would a 2-year period for mandatory relocation be appropriate, or should the Commission consider a shorter or longer time frame?

3. An Incentive Auction

22. The *NPRM* also seeks comment on whether the Commission should consider using its incentive auction authority to reduce encumbrances in the 900 MHz band. Under an incentive auction approach, the Commission would create a single 3/3 megahertz broadband license in each market by offering incentive-payments to existing MTA licensees in exchange for relinquishing spectrum usage rights, while also repacking site-based and any holdout MTA licensees. Incumbents with MTA licenses would be offered incentive payments in the form of vouchers in exchange for a commitment to relinquish their licensed spectrum usage rights. Accepting vouchers would be voluntary, however, and any MTA licensees participating in the auction for the broadband license would be required to commit to accepting vouchers for all their current licenses. In addition, any incumbent that wishes to bid for new licenses offered at auction would be required to relinquish all of its existing licenses for vouchers. The Commission would then run a clock auction to set both the price of new county-level broadband licenses and the amounts that incumbents will receive for relinquishing their MTA licenses. This single clock auction would simultaneously serve as the reverse and forward components of the incentive auction. At the end of the auction, the value of an incumbent's vouchers would be determined by the MHz-pops of spectrum usage rights relinquished and the price per unit of spectrum in the market as determined in an auction for the broadband license.

23. Under the incentive auction approach, the Commission would require site-based incumbent licensees to be repacked into the narrowband segments. All site-based incumbents (both within and outside the broadband segment) would be repacked simultaneously with the objective of minimizing the total number of channels required for these licensees to operate. Newly created vacant channels would be available to repack non-participating MTA licensees and to create the broadband license. If the repacking plan determines that there is insufficient spectrum to create a 3/3 megahertz broadband license, site-based licensees would be offered vouchers in exchange for a commitment to relinquish licenses. The *NPRM* seeks comment on this alternative transition mechanism.

24. The *NPRM* also seek comment on whether to reimburse any costs of relocating existing incumbents and, if so, how significant those costs likely would be. It also seeks comment on how to quantify the existing spectrum usage rights for purposes of offering vouchers to incumbents that do not hold geographic licenses in cases where such offers are required to achieve a 3/3 megahertz broadband license.

25. The clock auction format would proceed in a series of rounds, with simultaneous bidding for all the county broadband licenses. In each round, the auction would announce prices for each county license, and qualified bidders would indicate whether they are willing to purchase the county license at that clock price. Bidders would be subject to activity and eligibility rules that govern the pace at which they participate in the auction. In each county, the clock price for the license would increase from round to round if bidders indicate total demand that exceeds one license. If supply is equal to demand in a county, a bidder would not be permitted to create ''excess supply'' by reducing its demand for the broadband license. The clock rounds would continue until, for every county license available, the number of licenses demanded was less than or equal to one. At that point, those bidders indicating demand for a county license at the final clock phase price would be deemed winning broadband license bidders.

26. Following the auction, the processing of voucher payments for each incumbent licensee would depend on whether the spectrum offered in the reverse auction was needed in the forward broadband license auction. In counties where demand at the end of the forward auction equaled supply, the Commission would cancel the participating incumbents' licenses and make payments equal to the product of the final clock price and the MHz-Pops of spectrum relinquished by the incumbent. In counties where there was no demand for the broadband license, the Commissions proposes that incumbents would retain their existing spectrum usage rights and would receive no payments for their vouchers. To minimize the disruption to existing services, the Commission further proposes in this case that incumbent licensees would not be repacked since spectrum in these markets is unlikely to be sufficiently scarce to justify the cost of the repack. Alternatively, the Commission could pay for all vouchers and/or repack incumbents in every county regardless of the demand for a broadband license. The *NPRM* seeks comment on these and alternative approaches to implementing voucher payments and repacking incumbents.

27. The *NPRM* also seeks comments on the method for ensuring that the forward auction for broadband licenses will generate sufficient revenues to pay for all reimbursed vouchers and incumbent relocation costs, should it be necessary and possible to make such payments. In the broadcast incentive auction, the Commission adopted a ''final stage rule'' to ensure that auction proceeds would be sufficient to cover costs, and in other auctions the Commission has adopted aggregate reserve prices to fund the estimated relocation costs. In part, the rule in the broadcast incentive auction implemented a net revenue requirement for the auction that accounted for any bidding credits, relocation expenses, and incentive payments. Under such a net revenue requirement, the auction would not close unless auction proceeds are sufficient to cover all required

payments. The Commission seeks comment on whether it should establish such a net revenue requirement.

C. Licensing and Operating Rules

28. The *NPRM* proposes to designate the 900 MHz broadband service as a Miscellaneous Wireless Communications Service governed by Part 27 of the Commission's rules and asks commenters to identify any aspects of the Commission's general Part 27 service rules that should be modified to accommodate the characteristics of the proposed 900 MHz broadband segment. In the alternative, the Commission asks commenters to address whether 900 MHz broadband licenses should be regulated under Part 90 of the Commission's rules so that broadband licensees and narrowband incumbents in the 900 MHz band would be operating under a single set of rules.

29. *Eligibility.* In the event the Commission adopts a voluntary exchange process for transitioning the 900 MHz band, the *NPRM* proposes specific eligibility restrictions for a new 3/3 megahertz broadband license. Alternatively, if the Commission adopts an overlay or incentive auction approach for realigning the band, consistent with the Commission's approach to date toward flexible use geographic licensing, the Commission seeks comment on adopting an open eligibility standard for such licenses in the 900 MHz broadband segment. Would adopting an open eligibility standard for the licensing of 900 MHz broadband spectrum through competitive bidding, where appropriate, encourage efforts to develop new technologies, products, and services, while helping to ensure efficient use of this spectrum? The Commission asks commenters to discuss the costs and benefits of the open eligibility proposal on competition, innovation, and investment.

30. *Mobile spectrum holdings policies.* The *NPRM* seeks comment generally on whether and how to address any mobile spectrum holdings issues involving 900 MHz broadband spectrum to meet the Commission's statutory requirements and to ensure competitive access to the band. Given these characteristics, the Commission is not inclined to include the 900 MHz broadband segment in the Commission's spectrum screen, which helps to identify markets that may warrant further competitive analysis when evaluating proposed secondary market transactions. The *NPRM* asks commenters advocating for inclusion of the 900 MHz broadband segment in the screen to address specifically the suitability of this spectrum for use in the provision of mobile telephony/broadband services and to further discuss and quantify the costs and benefits of any proposals to apply mobile spectrum holdings policies to the proposed 900 MHz broadband segment.

31. *License term.* The *NPRM* proposes to adopt a 15-year term for licenses in the 900 MHz broadband spectrum and seeks comment on the costs and benefits of this proposal. In addition, the Commission seeks comment on whether and to what extent we should adopt shorter terms for subsequent renewal terms, given that relocation, band clearance, and initial performance requirements already will have been satisfied upon renewal of a given 900 MHz broadband license. It invites commenters to submit alternate proposals for the appropriate license term, which should similarly include a discussion of the costs and benefits.

32. *Performance requirements.* The *NPRM* seeks comment on adopting quantifiable benchmarks in the proposed broadband segment. Specifically, it seeks comment on requiring a 900 MHz broadband licensee to provide reliable signal coverage and to offer service to at least 45 percent of the population in each of its license areas within six years of the license issuance date (first performance benchmark), and to at least 80 percent of the population in each of its license areas within 12 years from the license issue date (second performance benchmark). The period for complying with these performance requirements would begin on the date that the is license is issued, irrespective of the extent to which the broadband licensee is able to successfully relocate existing licensees out of the 3/3 megahertz segment. After satisfying the 12-year, second performance benchmark, a licensee will be expected to continue to provide reliable signal coverage and offer service at or above that level for the remaining three years in the proposed 15-year license term in order to warrant license renewal.

33. The *NPRM* also seeks comment on whether the proposals discussed above represent the appropriate balance between license-term length and a significant final buildout requirement. It seeks comment on the proposed buildout requirements and any potential alternatives and asks what alternative metrics would be necessary, if any, to accommodate potential users of the 900 MHz broadband segment, such as electric utilities or other B/ILT eligibles. Should the Commission adopt specific performance requirements tailored to account for use of the spectrum for private business purposes? The Commission also seeks comment on whether small entities face any special or unique issues with respect to buildout requirements such that they would require certain accommodations or additional time to comply. The Commission further asks commenters to discuss and quantify how any proposed buildout requirements will affect investment and innovation, as well as discuss and quantify other costs and benefits associated with the proposal.

34. The *NPRM* proposes to require 900 MHz broadband licensees to deploy broadband technologies and offer broadband services in satisfying the proposed performance requirements and seeks comment on how to define broadband services for the purposes of this obligation. It also seeks comment on whether to similarly apply a broadband deployment requirement if the Commission uses an incentive or overlay auction to transition the 900 MHz band.

35. *Penalty for failure to meet performance requirements.* The *NPRM* proposes that, in the event a 900 MHz broadband licensee fails to meet the first performance benchmark, the licensee's second benchmark and license term would be reduced by two years, thereby requiring it to meet the second performance benchmark two years sooner (*i.e.,* at 10 years into the license term) and reducing its license term to 13 years. The *NPRM* further proposes that, in the event a 900 MHz broadband licensee fails to meet the second performance benchmark for a particular license area, its authorization for that license area shall terminate automatically without Commission action.

36. The *NPRM* proposes that, in the event a licensee's authority to operate terminates, the licensee's spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of section 309(j) of the Communications Act (if 900 MHz broadband licenses are assigned through competitive bidding). Further, consistent with the Commission's rules for other broadband licenses, the Commission proposes that any 900 MHz broadband licensee that forfeits its license for failure to meet its performance requirements would be precluded from regaining that license. The *NPRM* seeks comment on other penalties that would effectively ensure timely buildout.

37. *Competitive bidding procedures.* If the Commission adopts a geographic area licensing scheme that allows acceptance of mutually exclusive

applications for 900 MHz broadband licenses, the Commission will grant the licenses through a system of competitive bidding. The *NPRM* proposes to conduct any auction for 900 MHz broadband licenses in conformity with the general competitive bidding rules set forth in Part 1, subpart Q, of the Commission's rules and seeks comment on general application of the Part 1 competitive bidding rules to any auction of 900 MHz broadband spectrum licenses. It also seeks comment on whether any of the Commission's Part 1 rules or other competitive bidding policies would be inappropriate or should be modified for an auction of licenses in this band. The Commission seeks comment on the costs and benefits of these proposals.

38. The *NPRM* seeks comment on whether to make bidding credits for designated entities available for this band and how to define a small business if the Commission decides to offer small business bidding credits. It seeks comment on defining a small business as an entity with average gross revenues for the preceding three years not exceeding $55 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding $20 million. A qualifying ''small businesses'' would be eligible for a bidding credit of 15 percent and qualifying ''very small businesses'' would be eligible for a bidding credit of 25 percent. The Commission seeks comment on whether to offer rural service providers a designated entity bidding credit for licenses in this band.

39. *Renewal term construction obligations.* In addition to, and independent of, the general renewal requirements contained in section 1.949 of the Commission's rules, which apply to all Wireless Radio Services (WRS) licensees, the *NPRM* also seeks comment on application of specific renewal term construction obligations to 900 MHz broadband licensees. The *WRS Renewal Reform Further Notice of Proposed Rulemaking (WRS Renewal Reform FNPRM)* sought comment on various renewal term construction obligations, such as incremental increases in the construction metric in each subsequent renewal term—*e.g.,* by 5 or 10 percent—up to a certain threshold. The *WRS Renewal Reform FNPRM* proposed to apply rules adopted in that proceeding to all flexible geographic licenses. Given the Commission's proposal to license the 900 MHz band on a geographic basis for flexible use, any additional renewal term construction obligations proposed in the *WRS Renewal Reform FNPRM* also would apply to licenses in the 900 MHz broadband spectrum. The *NPRM* seeks comment on whether there are unique characteristics of 900 MHz broadband spectrum that might require a different approach to the 900 MHz band from the various proposals raised by the *WRS Renewal Reform FNPRM.* The Commission asks commenters advocating rules specific to the reconfigured 900 MHz band to address the costs and benefits of their proposed rules and also discuss how a given proposal would encourage investment and deployment in areas that might not otherwise benefit from significant wireless coverage.

D. Technical Rules

1. Broadband Segment

40. The *NPRM* seeks comment on the proposed technical rules. It proposes to permit an effective radiated power for base and repeater stations in the broadband segment not to exceed 400 watts/megahertz in non-rural areas and 800 watts/megahertz in rural areas, with the maximum permissible power decreasing as the HAAT rises above 304 meters. It also proposes to establish a median field strength limit of 40 dBμV/m at any given point along the geographic license area boundary in the broadband segment unless the affected licensee agrees to a higher field strength limit. This limit corresponds to the current field strength limit at the border between co-channel 900 MHz SMR licensees.

41. The *NPRM* proposes to make broadband licensees responsible for preventing harmful interference to narrowband operations and for resolving any interference in the shortest time practicable. Under existing 900 MHz co-channel separation requirements, co-channel systems generally must comply with a minimum spacing criteria of at least 113 kilometers (70 miles) separation distance between base stations. The *NPRM* seeks comment on applying existing minimum spacing criteria to 900 MHz broadband base station operations as a means of protecting co-channel narrowband licensees.

42. In addition, section 90.672(a)(1)(i)(A)–(B) currently defines unacceptable interference in the 900 MHz B/ILT Pool as a median desired signal strength of −88 dBm or higher as measured at the radiofrequency input of the receiver of a mobile unit, or −85 dBm or higher as measured at the radiofrequency input of the receiver of a portable station. Some commenters, however, propose to define harmful interference as receiving a median desired signal strength of −98 dBm or higher as measured at the radiofrequency input of the receiver of a mobile unit, or −95 dBm or higher as measured at the radiofrequency input of the receiver of a portable station (hand-held device), and suggest that we account for environmental noise by incorporating fade margins of 10 dB. The *NPRM* seeks comment on whether these criteria are appropriate, or whether the Commission should adopt technical standards and procedures that more closely align with the existing rules regarding unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems or Part 22 Cellular Radiotelephone systems, and within the 900 MHz B/ILT Pool. The Commission also asks whether it is practical to adopt a single standard to protect all narrowband operations from broadband operations, or whether separate criteria are needed for different circumstances, such as if the 897.5–900.5 MHz/936.5–939.5 MHz band is being used for broadband operations in one area but an adjacent area has not transitioned to the new band alignment.

43. The *NPRM* proposes to establish an out-of-band emission limit outside a licensee's frequency band of operation to be attenuated by at least 43 + 10 log (P) dB for uplink operations in the 897.5–900.5 MHz band and by at least 50 + 10 log (p) dB for downlink operations in the 936.5–939.5 MHz band. The *NPRM* asks commenters to discuss whether the proposed out-of-band emission limits are sufficient to protect narrowband operations in the adjacent narrowband segments, and whether the Commission should consider other harmful interference mitigation methods, such as limits on LTE transmitter power or additional transmitter filtering requirements. The Commission also asks commenters to discuss whether the proposed technical parameters are consistent with interference resistance of current 900 MHz narrowband radio equipment and systems.

2. Narrowband Segments

44. The *NPRM* seeks comment on whether any changes to the existing technical and operational rules are necessary or desirable to sustain continued 900 MHz site-based narrowband operations. Are the existing Part 90 technical rules suitable for narrowband operations in the newly designated paired narrowband segments? Specifically, given the proposal to eliminate the distinction between B/ILT and SMR blocks in the narrowband segment in transitioned markets, would new and existing narrowband segment licensees need

additional or modified interference protections? Under the voluntary exchange proposal, the band may be transitioned to the new broadband alignment on a county-by-county basis. Where a county has successfully been transitioned, would narrowband licensees in adjacent counties not transitioned to broadband require modified interference protection from newly licensed co-channel broadband operations? If so, the Commission asks commenters to specify the changes they believe should be made to the technical and operational rules for the two narrowband segments.

II. Procedural Matters

Initial Regulatory Flexibility Act Analysis

77. As required by the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 603), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM.* The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM* and should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Initial Paperwork Reduction Act Analysis

78. The *NPRM* contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

V. Ordering Clauses

79. *It is ordered,* pursuant to the authority found in sections 4(i), 302, 303, and 309, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154(i), 201, 301, 302a, 303, 304, 307, 308, 309, 310, 319, 324, 332, 333, and section 1.411 of the Commission's Rules, 47 CFR 1.411, that this *Notice of Proposed Rulemaking is hereby adopted.*

80. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1, 2, 20, 27, and 90

Administrative practice and procedure, Common carriers, Communications common carriers, Environmental impact statements, Radio, Telecommunications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 20, 27 and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Section 1.907 is amended by revising the definition of ''Covered Geographic Licenses'' to read as follows:

§ 1.907 Definitions.

* * * * *

Covered Geographic Licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G); 218–219 MHz Service (part 95, subpart F); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); Upper Microwave Flexible Use Service (part 30); and Wireless Communications Service (part 27, subpart D).

* * * * *

■ 3. Section 1.1307 is amended by revising Table 1 by revising the entry for Miscellaneous Wireless Communications Services, and adding a new entry for 900 MHz Broadband Service between the entry for Broadband Radio Service and Educational Broadband Service and the entry for Upper Microwave Flexible Use Service, to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
* * * *	* * *
Miscellaneous Wireless Communications Services (part 27 except subparts M and P).	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands: Non-building-mounted antennas: Height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP). Building-mounted antennas: Total power of all channels >2000 W ERP (3280 W EIRP).
* * * *	* * *
900 MHz Broadband Service (subpart P of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP). Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
* * * *	* * *

* * * * *

■ 4. Section 1.9005 is amended by adding a new paragraph (mm) to read as follows:

§ 1.9005 Included services.

* * * * *

(mm) The 900 MHz Broadband Service (part 27 of this chapter).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 5. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 6. Section 2.106 is amended by revising page 31 to read as follows:

Table of Frequency Allocations			894-1400 MHz (UHF)		Page 31
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	(See previous page)	
				894-896 AERONAUTICAL MOBILE US116 US268	Public Mobile (22)
				896-901 FIXED MOBILE except aeronautical mobile US116 US268	Wireless Communications (27) Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)
	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US218 US267 US275 G11	902-928 5.150 US218 US267 US275	ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
	928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation		928-932 US116 US268 G2	928-929 FIXED US116 US268 NG35	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US268	Personal Communications (24)
				931-932 FIXED LAND MOBILE US116 US268	Public Mobile (22)
			932-935 FIXED US268 G2	932-935 FIXED US268 NG35	Public Mobile (22) Fixed Microwave (101)
			935-941 US116 US268 G2	935-940 FIXED MOBILE except aeronautical mobile US116 US268	Wireless Communications (27) Private Land Mobile (90)
				940-941 FIXED MOBILE US116 US268	Personal Communications (24)

PART 20—COMMERCIAL MOBILE SERVICES

■ 7. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 8. Section 20.12 is amended by revising paragraph (a)(1) to read as follows:

§ 20.12 Resale and roaming.

(a)(1) Scope of manual roaming and resale. Paragraph (c) of this section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22,

subpart H of this chapter), Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter), and 900 MHz Broadband Service (included in part 27, subpart P of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular A or B block licenses.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 9. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 10. Section 27.1 is amended by adding paragraph (b)(15) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(15) 897.5–900.5 MHz and 936.5–939.5 MHz.

* * * * *

■ 11. Section 27.5 is amended by adding paragraph (m) to read as follows:

§ 27.5 Frequencies.

* * * * *

(m) *900 MHz Broadband.* The paired 897.5–900.5 MHz and 936.5–939.5 MHz bands are available for assignment on a geographic basis. For operations in the 897.5–900.5 MHz and 936.5–939.5 MHz bands (designated as Channels 121–360 in section 90.613 of this chapter), no new applications for narrowband systems under part 90, subpart S of this chapter will be accepted and no applications for modification of existing stations for major changes as defined in § 1.929 of this chapter will be accepted pursuant to § 27.1517 of this part.

* * * * *

■ 12. Section 27.12 is amended by revising paragraph (a) to read as follows:

§ 27.12 Eligibility.

(a) Except as provided in paragraph (b) and in §§ 27.604, 27.1201, 27.1202, and 27.1509, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

* * * * *

■ 13. Section 27.13 is amended by adding paragraph (m) to read as follows:

§ 27.13 License Period.

* * * * *

(m) *900 MHz Broadband.* Authorizations for the 897.5–900.5 MHz and 936.5–939.5 MHz bands will have a term not to exceed 15 years from the date of initial issuance.

* * * * *

■ 14. Part 27 is amended by adding a new subpart P to read as follows:

Subpart P—Regulations Governing Licensing and Use of 900 MHz Broadband Service in the 896–901 and 935–940 MHz Bands

Sec.

27.1501 Scope
27.1503 Definitions
27.1505 Licensing of the 897.5–900.5/936.5–939.5 MHz band
27.1507 900 MHz Broadband subject to competitive bidding
27.1509 Eligibility
27.1511 Performance requirements
27.1513 [Reserved]
27.1515 [Reserved]
27.1517 Frequencies
27.1519 Effective radiated power limits for 900 MHz Broadband systems
27.1521 Field strength limit
27.1523 [Reserved]
27.1525 Emission limits
27.1527 [Reserved]

§ 27.1501 Scope.

This subpart sets out the regulations governing the licensing and operations of 900 MHz BB systems operating in the 897.5–900.5/936.5–939.5 MHz band. It includes eligibility requirements and operational and technical standards for stations licensed in this band. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter and the competitive bidding procedures contained in part 1, subpart Q of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing, competitive bidding and operation in this frequency band.

§ 27.1503 Definitions.

Terms used in this subpart shall have the following meanings:

(a) *900 MHz Broadband (900 MHz BB).* The market-based 900 MHz broadband systems in the 897.5–900.5/936.5–939.5 MHz band licensed by the Commission pursuant to the provisions of this subpart.

(b) *900 MHz Broadband (900 MHz BB) licensee.* An entity that holds a 900 MHz BB license issued pursuant to § 27.1505 of this subpart.

(c) *900 MHz Narrowband.* The segment of realigned 900 MHz spectrum in the 896–897.5/900.5–901/935–936.5/939.5–940 MHz band designated for narrowband operations and licensed pursuant to 47 CFR part 90, subpart S of this chapter.

(d) *Covered incumbent licensee.* Any entity that holds an existing site-based license in the 897.5–900.5/936.5–939.5 MHz band that, pursuant to § 90.621 of this chapter, is required to be protected by the 900 MHz BB licensee's placement of a base station at any location within the county covered by the BB license.

(e) *Power spectral density (PSD).* The power of an emission in the frequency domain, such as in terms of ERP or EIRP, stated per unit bandwidth, *e.g.,* watts/MHz.

(f) *Prospective broadband licensee.* An entity that holds the licenses for all 20 blocks of geographically-licensed SMR spectrum in the 896–901/935–940 MHz band and seeks to acquire a 900 MHz BB license via a Voluntary Exchange Process.

(g) *Voluntary Exchange Process.* The process for realigning the 896–901/935–940 MHz band, whereby the prospective broadband licensee and covered incumbent licensees voluntarily agree to a Transition Plan that will relocate to the 900 MHz Narrowband segment and/or provide interference protection to all incumbent operations, thereby making the 900 MHz Broadband segment available for the prospective broadband licensee's use, pursuant to the provisions of this subpart.

(h) *Transition Plan.* Under a Voluntary Exchange Process for realigning the 900 MHz band, a filing made to the Commission as part of the prospective broadband licensee's application for a new 900 MHz BB license that describes: (1) The spectrum frequencies within the broadband segment that the prospective broadband licensee seeks from Commission inventory, (2) the rights to all 20 geographically-licensed SMR blocks, and any site-based SMR or B/ILT licenses in the county that the licensee is relinquishing, (3) the applications that the parties to the agreement will file for spectrum in the narrowband segment in order to relocate or repack licensees, (4) a description of how the applicant will provide interference protection to, and/or relocate from the broadband

segment, all covered incumbents, and (5) any rule waivers or other actions necessary to implement the Transition Plan.

§ 27.1505 Licensing of the 897.5–900.5/936.5–939.5 MHz band.

(a) *License Area.* [Reserved]

(b) A 900 MHz BB licensee that permanently discontinues service as defined in § 1.953 must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 requesting license cancelation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this chapter, even if a licensee fails to file the required form requesting license cancelation.

§ 27.1507 900 MHz Broadband subject to competitive bidding.

Mutually exclusive initial applications for 900 MHz broadband licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.1509 Eligibility

(a) *Voluntary Exchange Process.* Eligibility for a 900 MHz BB license in a county that is transitioned using a Voluntary Exchange Process is limited to the following restrictions:

(1) The applicant must hold the licenses for all 20 blocks of geographically-licensed 900 MHz SMR spectrum in the county;

(2) The applicant must account for all covered incumbent(s) by demonstrating one or more of the following: (i) Agreement by covered incumbent(s) to relocate from the broadband segment, (ii) protection of covered incumbent(s) through compliance with minimum spacing criteria set forth in § 90.621(b) of this chapter, and/or (iii) protection of covered incumbent(s) through new or existing letters of concurrence agreeing to lesser base station separations. The applicant may use its current 900 MHz holdings in the narrowband segment to relocate covered incumbents. Spectrum used for the purposes of relocating incumbent(s) may not exceed the incumbent's current spectrum holdings in the relevant county, unless additional channels are necessary to achieve equivalent coverage and/or capacity; and

(3) The applicant must agree to return to the Commission the rights to all 20 blocks of geographically-licensed SMR spectrum in the relevant county, as well as any B/ILT or SMR site-based licenses.

(b) *Auction.* Eligibility for a 900 MHz BB license in a county that has been transitioned using an auction mechanism is subject to the restrictions listed in § 27.12 of this chapter.

§ 27.1511 Performance requirements.

(a) 900 MHz BB licensees shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter.

(1) The licensee must certify whether it has met the applicable performance requirements. The licensee must file a description and certification of the areas for which it is providing service. The construction notifications must include electronic coverage maps and supporting technical documentation regarding the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service, and certify the accuracy of such documentation. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

(2) To demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license.

(b) The following performance requirements apply to 900 MHz BB licensees:

(1) A licensee shall provide reliable signal coverage and offer service within six years from the date of the initial license to at least 45 percent of the population in each of its license areas (''First Buildout Requirement'').

(2) A licensee shall provide reliable signal coverage and offer service within 12 years from the date of the initial license to at least 80 percent of the population in each of its license areas (''Second Buildout Requirement'').

(3) If a licensee fails to establish that it meets the First Buildout Requirement for a particular license area, the licensee's Second Buildout Requirement deadline and license term will be reduced by two years.

(4) If a licensee fails to establish that it meets the Second Buildout Requirement for a particular license area, its authorization for each license area in which it fails to meet the Second Buildout Requirement shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(c) *Broadband Service Requirement.* To satisfy the performance requirements described in paragraph (b), 900 MHz BB licensees must deploy broadband technologies and offer broadband services.

§ 27.1513 [Reserved]

§ 27.1515 [Reserved]

§ 27.1517 Frequencies.

896–901 MHz and 935–940 MHz bands. The 897.5–900.5 MHz and 936.5–939.5 MHz band segments are available for licensing with an authorized bandwidth up to 3 megahertz. The 897.5–900.5 MHz segment must only be used for uplink transmissions. The 936.5–939.5 MHz segments must only be used for downlink transmissions.

§ 27.1519 Effective radiated power limits for 900 MHz Broadband systems.

(a) Maximum ERP. The power limits specified in this section are applicable to operations outside the Canadian and Mexican border areas. Power limits for operation in those areas are specified in section 27.1523 of this part.

(1) General Limit.

(i) The ERP for base and repeater stations must not exceed 400 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 400 watts/megahertz ERP in accordance with Table 1 of paragraph (e) of this section.

(ii) Provided that they also comply with paragraphs (b) and (c) of this section, licensees are permitted to operate base and repeater stations with up to a maximum ERP of 1000 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304

m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 1000 watts/megahertz ERP in accordance with Table 2 of paragraph (e) of this section.

(2) Rural Areas. For systems operating in areas more than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border that are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census:

(i) The ERP for base and repeater stations must not exceed 800 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 800 watts/megahertz ERP in accordance with Table 3 of paragraph (e) of this section.

(ii) Provided that they also comply with paragraphs (b) and (c) of this section, base and repeater stations may operate with up to a maximum ERP of 2000 watts/megahertz power spectral density (PSD) per sector and an antenna height of 304 m height above average terrain (HAAT), except that antenna heights greater than 304 m HAAT are permitted if power levels are reduced below 2000 watts/megahertz ERP in accordance with Table 4 of paragraph (e) of this section.

(3) Mobile, control and auxiliary test stations must not exceed 10 watts ERP.

(4) Portable stations must not exceed 3 watts ERP.

(b) Power flux density (PFD). Each 900 MHz BB base or repeater station that exceeds the ERP limit of paragraphs (a)(1)(i) or (a)(2)(i) of this section must be designed and deployed so as not to exceed a modeled PFD of 3000 microwatts/m^2/MHz over at least 98% of the area within 1 km of the base or repeater station antenna, at 1.6 meters above ground level. To ensure compliance with this requirement, the licensee must perform predictive modeling of the PFD values within at least 1 km of each base or repeater station antenna prior to commencing such operations and, thereafter, prior to making any site modifications that may increase the PFD levels around the base or repeater station. The modeling must take into consideration terrain and other local conditions and must use good engineering practices for the 900 MHz band.

(c) Power measurement. Measurement of 900 MHz BB base transmitter and repeater ERP must be made using an average power measurement technique. Power measurements for base transmitters and repeaters must be made in accordance with either of the following:

(1) A Commission-approved average power technique (see FCC Laboratory's Knowledge Database); or

(2) For purposes of this section, peak transmit power must be measured over an interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

(d) PAR limit. The peak-to-average ratio (PAR) of the transmission must not exceed 13 dB.

(e) Height-power limit. As specified in paragraph (a) of this section, the following tables specify the maximum base station power for antenna heights above average terrain (HAAT) that exceed 304 meters.

TABLE 1—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 400 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	26
Above 1220 (4000) To 1372 (4500)	28
Above 1067 (3500) To 1220 (4000)	30
Above 915 (3000) To 1067 (3500)	40
Above 763 (2500) To 915 (3000)	56
Above 610 (2000) To 763 (2500)	80
Above 458 (1500) To 610 (2000)	140
Above 305 (1000) To 458 (1500)	240
Up to 305 (1000)	400

TABLE 2—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 1000 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	65

TABLE 2—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 1000 WATTS/MEGAHERTZ—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 3—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 800 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	52
Above 1220 (4000) To 1372 (4500)	56
Above 1067 (3500) To 1220 (4000)	60
Above 915 (3000) To 1067 (3500)	80
Above 763 (2500) To 915 (3000)	112
Above 610 (2000) To 763 (2500)	160
Above 458 (1500) To 610 (2000)	280
Above 305 (1000) To 458 (1500)	480
Up to 305 (1000)	800

TABLE 4—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 2000 WATTS/MEGAHERTZ

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280

TABLE 4—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE STATIONS PERMITTED TO TRANSMIT WITH UP TO 2000 WATTS/MEGAHERTZ—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts/megahertz)
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

§ 27.1521 Field strength limit.

The predicted or measured median field strength must not exceed 40 dBμV/m at any given point along the 900 MHz BB market boundary, unless the affected licensee agrees to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

§ 27.1523 [Reserved]

§ 27.1525 Emission limits.

The power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) in watts by at least the following amounts:

(a) For 900 MHz BB operations in 897.5–900.5 MHz band by at least 43 + 10 log (P) dB.

(b) For 900 MHz BB operations in the 936.5–939.5 MHz band, by at least 50 + 10 log (P) dB.

(c) Measurement procedure. Compliance with the provisions of paragraphs (a) and (b) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the licensee's band, a resolution bandwidth of at least 1 percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(d) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 15. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 16. Section 90.7 is amended by adding a definition for ''900 MHz Broadband (900 MHz BB)'' in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

900 MHz Broadband (900 MHz BB). See section 27.1503 of part 27 of this chapter.

* * * * *

■ 17. Section 90.35 is be amended by revising paragraph (c)(71) to read as follows:

§ 90.35 Industrial/Business Pool.

(c) * * *

(71) Subpart S of this part contains rules for assignment of frequencies in the 806–821/851–866 MHz band and for narrowband operations in the 896–901/935–940 MHz band.

* * * * *

■ 18. Section 90.205 is amended by revising paragraph (k) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(k) *806–824 MHz, 851–869 MHz, 896–901 MHz and 935–940 MHz.* Power and height limitations for frequencies in the 806–821/851–866 MHz band and for narrowband operations in the 896–901/935–940 MHz band are specified in § 90.635 of this part.

* * * * *

■ 19. Section 90.209 is amended by revising paragraph (b)(3) and adding a new footnote 7 to the table in paragraph (b)(5) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(3) For all other types of emissions, except for emissions associated with 900 MHz BB systems under subpart P of part 27 of this chapter, the maximum authorized bandwidth shall not be more than that normally authorized for voice operations.

* * * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * * * *		
896–901/935–940 [7]	12.5	13.6
* * * * * * *		

[7] 900 MHz BB systems may operate on channels and with bandwidths pursuant to the rules specified in subpart P of part 27 of this chapter.

* * * * *

■ 20. Section 90.210 is amended by adding a new footnote 7 to the table in the introductory text to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *	*	*
896–901/935–940 [7]	I	J
* * * * *	*	*

[7] Equipment used with 900 MHz BB systems operating under subpart P of part 27 of this chapter is subject to the emission limitations in § 27.1525 of this chapter.

* * * * *

■ 21. Section 90.213 is amended by adding a new footnote 15 to the table in paragraph (a) to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * *		*	*
896–901 [15]	140.1	1.5	1.5
* * * * *		*	*
935–940 [15]	0.1	1.5	1.5
* * * * *		*	*
* * * * *		*	*

[15] Equipment used with 900 MHz BB systems operating under subpart P of part 27 of this chapter is exempt from the frequency stability requirements of this section. Instead, the frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

* * * * *

* * * * *

■ 22. Section 90.601 is amended to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands, except for 900 MHz BB systems operating in the 897.5–900.5/936.5–939.5 MHz band under subpart P of part 27 of this chapter. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

■ 23. Section 90.613 is amended by revising the introductory text to read as follows:

§ 90.613 Frequencies available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. For operations in the 897.5–900.5 MHz and 936.5–939.5 MHz bands (Channels 121–360), no new applications for narrowband systems under this subpart will be accepted and no applications for modification of existing stations for major changes as defined in § 1.929 of this chapter will be accepted pursuant to § 27.1517 of this chapter. Only the base station transmitting frequency of each pair is listed in the following table.

[FR Doc. 2019–06349 Filed 4–2–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 84, No. 64

Wednesday, April 3, 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

Submission for OMB Review; Comment Request

March 29, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 3, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. 7 CFR part 1786, subparts E and F are authorized by this section.

Need and Use of the Information: The required documentation and information will be collected from electric and telecommunications program borrowers. The purpose of the information collected is to provide borrowers an opportunity to request prepayment of their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of Subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of Subpart G is to refinance.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 38.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 76.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–06445 Filed 4–2–19; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee Advisory Committee will hold a public meeting on Friday, April 5, 2019; 1:30–2:30 p.m. Eastern to discuss testimony heard on March 27, 2019, regarding Legal Financial Obligation (LFO) and discuss and potentially vote on a statement to the Commission based on testimony heard.

DATES: The meeting will be held on Wednesday, April 5, 2019; 1:30–2:30 p.m. EDT.

Public Call Information: Call: 855–719–5012; Conference ID: 8658771.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at (312) 353–8311 or via email at *jhinton@usccr.gov.*

SUPPLEMENTARY INFORMATION: Members of the public are invited to come in and listen to the discussion. Written comments will be accepted until April 30, 2019 and may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may be emailed to the Alejandro Ventura at *aventura@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Office at the above email or street address.

Agenda

Welcome and Call to Order

- Diane DiIanni, Tennessee SAC Chairman

New Business: Diane DiIanni, Tennessee SAC Chairman/Staff/Advisory Committee

- Discussion of testimony heard at public meeting (LFO)
- Consideration of statement to the Commission

Public Participation

Adjournment

Dated: March 29, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–06435 Filed 4–2–19; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of commission business meeting; public comment session and written comment submission on Immigration Detention Centers and Treatment of Immigrants.

DATES: Friday, April 12, 2019 at 9:00 a.m. Eastern Daylight Time (EDT); written comment submission through Monday, May 13, 2019.

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, 11th Floor, Suite 1150, Washington, DC 20425 (Entrance on F Street NW).

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This meeting and public comment session is open to the public. There will also be a call-in line for individuals who desire to listen to the meeting: 1–800–682–0995, Conference ID 102–3168. The sessions will also live-stream at *https://www.youtube.com/user/USCCR/videos.* (Streaming information subject to change.) If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven (7) business days before the date of the meeting.

Meeting Agenda

I. Commission Business Meeting: 9:00 a.m.

II. Public Comment Session: Immigration Detention Centers and Treatment of Immigrants: 10:00 a.m.–11:30 a.m. (end time subject to change).

III. Break: 11:30 a.m.–1:00 p.m. (break start time subject to change).

IV. Commission Subcommittee Meeting: Immigration Detention Centers and Treatment of Immigrants: 1:00 p.m.–2:00 p.m.

Detailed Information

Public Comment Session and Written Comment Submission: Immigration Detention Centers and Treatment of Immigrants

In 2015, the Commission issued a report, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities.* In that report, the Commission specifically addressed the status of detained undocumented immigration children and found substantial questions regarding the compliance of both the Office of Refugee Resettlement of the Department of Health & Human Services (HHS) and the Department of Homeland Security (DHS) with the quality care standards and the terms of the Flores Settlement Agreement for unaccompanied minor children. Further, the Commission examined policies and standards surrounding the detention of families at residential centers operated by DHS.

In 2018, as part of implementing its ''zero tolerance'' program for border crossings, the federal government began forcibly separating undocumented immigrant children from their parent. After reversing this policy, the federal government stated it would seek legal authority to allow indefinite detention of children and their families. In July 2018, the Commission voted to reopen its investigation on the conditions of immigration detention, and appointed a Subcommittee to examine the issue further. The Commission's Subcommittee has sought information from DHS and HHS, in the form of interrogatories and document requests. The Commission's requests to DHS and HHS are available on our website.

To supplement the solicited information, the Commission's Subcommittee will hold an in-person public comment session on the condition of immigration detention centers and status of treatment of immigrants, including children. This in-person public comment session will take place from 10:00 a.m. to 11:30 a.m. on Friday, April 12, 2019. The Commission Subcommittee seeks to hear from members of the public, including policy advocates, legal experts, affected persons, and other individuals who wish to speak on the issue.

Members of the public will have up to approximately five (5) minutes to address the Commission, with spots allotted on a first-come, first-serve basis. There will be a limited time for the Commissioners to engage in direct dialogue with the members of the public. Individuals will be able to register for speaking slots, both online and at the public comment session (in person).

The event will also live-stream at *https://www.youtube.com/user/USCCR/videos.* (Streaming information subject to change.) If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven (7) business days before the date of the meeting.

The Commission will provide interpretation services in Spanish. Individuals are also welcome to bring their own interpreters (for Spanish or other languages). Additional time may be allotted to individuals requiring interpretation services, as necessary.

Online registration: On Thursday, April 4, 2019, beginning at 9:00 a.m. EDT, individuals will be able to register to speak online at Eventbrite: *https://www.eventbrite.com/e/public-comment-session-immigrant-detention-treatment-tickets-59108479052.* This registration option will remain open until all slots are filled, and no later than 5:00 p.m. EDT on Thursday, April 11, 2019. An individual who successfully registers online must be physically present for the public comment session no later than 9:30 a.m. EDT on April 12 (sign-in opens at 9:00 a.m.), or risk forfeiting the individual's speaking slot.

In person registration, Friday, April 12: Individuals will have the opportunity to sign up for a limited number of speaking slots, in person, the day of the public comment session, beginning at 9:00 a.m. on Friday, April 12, 2019. If the online registration spots are not filled, or individuals who signed up online do not appear to claim their spot, these spots will open up to any further interested participants.

Written comments: The Commission also welcomes written submission of material for consideration. Please submit such information no later than May 13, 2019 to *immigration@usccr.gov* or by mail to: Staff Director/Public Comments, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

You can stay abreast of updates at: *www.usccr.gov,* Twitter, and Facebook.

Dated: March 29, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019–06530 Filed 4–1–19; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Thursday April 18, 2019, from 2–3 p.m. EDT for the purpose of discussing civil rights in the state.

DATES: The meeting will be held on Thursday April 18, 2019, from 2–3 p.m. EDT.

ADDRESSES: Public Call Information: Dial: 855–719–5012; Conference ID: 9396916.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Members of the public may join through the above listed toll free call in number. Members of the public will be invited to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Lead Poisoning of Indiana's Children
- Web hearing preparations

Public Comment
Adjournment

Dated: March 28, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–06412 Filed 4–2–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Friday April 19, 2019 at 11:00 a.m. Central time. The Committee will discuss next steps in their study of prosecutorial discretion in the state.

DATES: The meeting will take place on Friday April 19, 2019 at 11:00 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 877–260–1479, Conference ID: 8208723. Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call

II. Discussion: Prosecutorial Discretion in Mississippi

III. Public comment

IV. Next steps

V. Adjournment

Dated: March 28, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–06411 Filed 4–2–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Tuesday April 23, 2019 from 1:00 p.m. until 3:30 p.m. Central time. The Committee will hear public testimony regarding civil rights and mass incarceration in the state.

DATES: The meeting will take place on Tuesday April 23, 2019 from 1:00 p.m. until 3:30 p.m. Central time.

Location: The E.J. Ball Courtroom, University of Arkansas School of Law. 1045 W Maple Ave., Fayetteville, AR 72701.

Remote Call Information (audio only): Dial: 877–260–1479, Conference ID: 1500225.

Live Web Stream: https://echo360.org/section/a38a4312-913f-4c45-90fe-44481deb1242/public.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Members of the public may appear in person and participate. Members of the public may also listen to the discussion through the above listed toll free number (audio only), or via the above listed web streaming link. Members of the public will be invited to make a statement as time allows; you must sign up on-site when you arrive if you wish to speak.

For those joining remotely, the conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Public Testimony: Mass Incarceration
Adjournment

Dated: March 28, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–06409 Filed 4–2–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–19–2019]

Foreign-Trade Zone (FTZ) 249—Pensacola, Florida; Notification of Proposed Production Activity; GE Renewables North America, LLC (Wind Turbine Nacelles, Hubs, and Drivetrains); Pensacola, Florida

GE Renewables North America, LLC (GE Renewables) submitted a notification of proposed production activity to the FTZ Board for its facility in Pensacola, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 25, 2019.

GE Renewables already has authority to produce wind turbines, related hubs and nacelles, and drivetrains within Subzone 249A. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt GE Renewables 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, GE Renewables would be able to choose the duty rates during customs entry procedures that apply to the finished products in the existing scope of authority. GE Renewables 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 materials/components sourced from abroad include shrink disks, insert tapers, gearbox covers for machine head nacelle assemblies, and pitch covers for hubs (duty rate ranges from duty-free to 3%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 13, 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 Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: March 27, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–06471 Filed 4–2–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG906

Marine Mammals; File No. 22479

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jose Pablo Vazquez-Medina, Ph.D., University of California Berkley, Department of Integrative Biology, 3040 Valley Life Sciences Building, #3140, Berkley, CA 94720, has applied in due form for a permit to import specimens of marine mammals for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before May 3, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 22479 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export biological samples from up to 200 pinnipeds (excluding walrus) and 200 cetaceans annually. The samples will be used to examine the effects of stress hormones and chemical pollutants on marine mammal cellular and tissue functions. The permit is requested for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 29, 2019.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–06465 Filed 4–2–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG849

Addition of Species to the Annexes of the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region

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

ACTION: Notice; request for public comments.

SUMMARY: During a meeting of the Scientific and Technical Advisory Committee (STAC) under the Protocol to the Cartagena Convention on Specially Protected Areas and Wildlife (SPAW Protocol), held in Panama City, Panama in December 2018, two animal species were nominated and recommended to be added to the Annexes of the SPAW Protocol. The Department of State and NMFS solicit comment on the recommendations to add these two species to the Annexes.

DATES: Comments must be received by May 3, 2019.

ADDRESSES: You may submit comments on the recommendations to add the two species to the Annexes of the SPAW Protocol, identified by NOAA–NMFS–2019–0020, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0020.* Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Addition of Species to the Annexes of the SPAW Protocol, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Anonymous comments will be accepted (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NOAA (301) 427–8491; *chelsey.young@noaa.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The SPAW Protocol is a protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention or Convention). There is also a protocol to the Convention addressing land-based sources of pollution and a protocol addressing regional cooperation on oil pollution preparedness and response. The SPAW Protocol was adopted in 1990 and entered into force in 2000. The United States ratified the SPAW Protocol in 2003. There are currently 16 countries that are Parties to the SPAW Protocol from throughout the Wider Caribbean Region.

Participants at the December 2018 meeting of the STAC to the SPAW Protocol included representatives from:

Aruba, Barbados, Belize, Colombia, Curacao, Dominican Republic, France, Grenada, Guyana, Jamaica, the Netherlands, Panama, Saint Lucia, Trinidad and Tobago, the United States of America, and Venezuela. Representatives of several non-governmental organizations also attended as observers.

The U.S. delegation included representatives from the U.S. Department of State and NOAA's National Marine Fisheries Service (NMFS) and National Ocean Service. Copies of the official ''Recommendations of the Meeting,'' a full list of participants, and the text of the Cartagena Convention and SPAW Protocol can be obtained at *http://www.cep.unep.org/meetings/2018-meetings/8th-spaw-stac.*

Convention and Convention Area

The Cartagena Convention is a regional agreement for the protection and development of the marine environment of the Wider Caribbean Region. The Convention was adopted in 1983 and entered into force in 1986. The United States ratified the Convention in 1984. The Convention area includes the marine environment of the Gulf of Mexico, the Caribbean Sea and the adjacent areas of the Atlantic Ocean south of lat. 30°N. and within 200 nautical miles (nmi) of the Atlantic coasts of the Parties. The United States' responsibility within this Convention area includes: U.S. waters off of Puerto Rico, the U.S. Virgin Islands, and peninsular Florida, including the Atlantic coast; the waters off of a number of islands including coastal barrier islands and the Florida Keys; and the Gulf of Mexico waters under U.S. jurisdiction. The SPAW Protocol provides that each Party may designate related terrestrial areas over which they have sovereignty and jurisdiction (including watersheds) to be covered by the SPAW Protocol. The United States has not designated any terrestrial areas under the SPAW Protocol and ''does not intend to designate a terrestrial area under the Protocol unless requested to do so by an interested state or territory . . . '' (Senate Executive Report 107–8).

The Annexes and U.S. Obligations Under Each Annex

The SPAW Protocol includes three Annexes. Plant species subject to the highest levels of protection are listed in Annex I, and animal species subject to the highest levels of protection are listed in Annex II. Plants and animals subject to some management, but lesser protections than those afforded to species listed in Annexes I or II, are listed in Annex III.

Annexes I (flora) and II (fauna) are to include endangered and threatened species, or subspecies, or their populations as well as rare species. The SPAW Protocol describes rare species as those ''that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction.''

Under Article 11(1), for fauna listed in Annex II, Parties ''shall ensure total protection and recovery to the species . . . by prohibiting: (i) The taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products; [and] (ii) to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress.''

Also under Article 11(1), for Annex III species, the SPAW Protocol states: ''Each Party shall adopt appropriate measures to ensure the protection and recovery of the species of flora and fauna listed in Annex III and may regulate the use of such species in order to ensure and maintain their populations at the highest possible levels.'' Therefore, some regulated harvest may be permitted for species on Annex III. The protective provisions of this Annex are not intended to be more restrictive than the provisions of Annexes I and II.

The United States ratified the SPAW Protocol, including Annexes, subject to certain reservations, including the following with respect to Article 11(1): ''The United States does not consider itself bound by Article 11(1) of the [SPAW] Protocol to the extent that United States law permits the limited taking of flora and fauna listed in Annexes I and II [ ] which is incidental, or [ ] for the purpose of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation.''

Summary of Annexes

Annex I contains a total of 53 plant species. All plant species on Annex I are either: (1) Listed under the U.S. Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*); (2) endemic to Florida and protected under Florida law; (3) occur only on Federal land and are fully protected where they occur; (4) are not native to the United States, and are listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where primarily commercial trade would be prohibited; or (5) are not native nor believed to be commercially imported into the United States. 56 FR 12026, 12028 (March 21, 1991). There have been no additions to Annex I since the adoption of the SPAW Protocol.

Annex II currently contains 116 species and 3 groups of species, including all sea turtles and all marine mammals in the region. Most of these animal species are either: (1) Listed under the ESA or the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*); (2) are not native to the United States and are listed in Appendix I of CITES; (3) are offered complete protection by domestic legislation in all range countries (whereby the Lacey Act, among other things, prohibits commercial trade in specimens taken, possessed, transported or sold in violation of foreign law); or (4) are endemic to foreign countries and are not commercially imported into the United States. Six new species were added to Annex II by the SPAW Parties in December 2014.

Annex III currently contains 43 species of plants and 42 species of animals in addition to species of corals, mangroves, and sea-grasses that occur in the region.

Composition of the Annexes

The plant and animal species included on each Annex can be found at *http://www.car-spaw-rac.org/?Annexes-of-the-SPAW-Protocol,83.*

Species Recommended by SPAW STAC To Be Added to the SPAW Protocol Annexes

ANNEX II

Species	Common name
FISH	
Pristis pristis	Largetooth sawfish.

ANNEX III

Species	Common name
Sharks	
Charcharhinus falciformis.	Silky shark.

Circumstances of SPAW STAC Recommendations

Article 11(4) of the SPAW Protocol details the requirements for amending the Annexes and states, in part, that a

Party may submit a nomination of a species for inclusion in or deletion from the Annexes; that the Party shall submit supporting documentation; and that the SPAW STAC shall review the nomination. At the December 2018 meeting, the SPAW STAC reviewed the species proposed by Parties for listing under the SPAW Protocol and made recommendations to the tenth SPAW Conference of the Parties (COP10) meeting, expected to be held in June 2019. The STAC determined that the procedures for nominating species and the supporting documentation were satisfactory for positive recommendations to the COP regarding the species identified above.

Species Under the Jurisdiction of the National Marine Fisheries Service

Both species recommended by the STAC to be added to the Annexes at the December 2018 meeting fall under the jurisdiction of NMFS. One species of fish, the largetooth sawfish (*Pristis pectinata*), has been recommended to be added to Annex II. The largetooth sawfish is currently listed as endangered under the ESA, and was originally listed under the ESA in 2011. The other species under NMFS' jurisdiction, the silky shark (*Charcharhinus falciformis*) has been recommended to be added to Annex III.

Comments Solicited

The Department of State and NMFS solicit comments and information that will inform the United States' consideration of the potential listing of these species in the SPAW Annexes.

Dated: March 28, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–06416 Filed 4–2–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection 3038–0052; Core Principles and Other Requirements for Designated Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the proposed revision of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed revision of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the revision of estimates contained in information collection requirements related to the recent amendment of the timing and scope of a report required to be filed by self-regulatory organizations (SROs) pursuant to Commission Regulation 1.52.

DATES: Comments must be submitted on or before June 3, 2019.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0052'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Joshua Beale, Associate Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5447; email: *jbeale@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice for the amendment of the collection listed below. 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.

Title: Core Principles and Other Requirements for Designated Contract Markets (OMB Control No. 3038–0052). This is a request for a revision of a currently approved information collection.

Abstract: The Commission has recently amended its regulation 1.52 to revise the scope and potential frequency of a third-party expert's evaluation of SROs' financial surveillance programs. The evaluation report requirement is a portion of the existing information collection of requirements for SROs under Commission regulation 1.52, including Designated Contract Markets and the National Futures Association. The Commission's rulemaking will not alter the requirement for an SRO to engage an examinations expert to evaluate its supervisory program prior to the initial use of the supervisory program. The Commission, however, is eliminating the requirement that the examinations expert must review the SRO's ongoing application of its supervisory program during periodic reviews and the analysis of the supervisory program's design to detect material weaknesses in internal controls during both periodic reviews and the initial review prior to the program's initial use. The Commission also is revising the frequency of when an SRO must engage an examinations expert. Regulation 1.52 required an SRO to engage an examinations expert at least once every three years to perform such a review. The Commission amended Regulation 1.52 to require an SRO to engage an examinations expert whenever the Public Company Accounting Oversight Board (''PCAOB'') issues new or revised auditing standards that are material to the SRO's examination of member FCMs. The amendments further require an SRO to engage an examinations expert at least once every five years even if the SRO determined that the PCAOB did not issue new or revised auditing standards during the previous five-year period that are material to its examinations of member FCMs. The changes to the examinations expert reviews impact the resulting expert reports information collection burden. The information collection is necessary to enhance the ability of the Commission and the designated self-regulatory organization to identify problematic financial matters in time to avoid market disruptions when an FCM may fail, particularly with respect to the tie-up of customer funds that may result.

The Commission, when originally proposing changes to regulation 1.52, invited comments on its assessment that although the costs associated with obtaining the third-party expert would be reduced by the amendment, the paperwork burden impact of the amended scope of the report would be minimal. The Commission received no comments and has adopted the final rule. However, the Commission has determined that a slight revision of the expected burden hours associated with the information collection is possible due to the changes related to the third-party examinations expert report. Accordingly, the Commission is revising the total burden hours related to regulation 1.52 included in this collection.

The Commission previously estimated the entire burden hours for designated contract markets as SROs associated with regulation 1.52 as 50 hours per respondent. The revised scope of the third-party evaluation report should slightly reduce personnel hours needed to coordinate obtaining the report, although most of the burden hours included in this collection are associated with other aspects of the financial surveillance program requirements. Therefore, the Commission is revising the estimate of the burden hours associated with regulation 1.52 to be 49 hours per respondent. Additionally, the Commission notes that the number of registered, active DCMs has decreased from 15 to 14.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

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

Burden Statement: The Commission is revising its estimate of the burden for this collection.[2] The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Designated Contract Markets and Self-regulatory Organizations.

Estimated Number of Respondents: 14.

Estimated Average Burden Hours per Respondent: 49.

Estimated Total Annual Burden Hours: 686.

Frequency of Collection: Various.

The amended regulations require no new startup or operations and maintenance costs.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: March 29, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–06444 Filed 4–2–19; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] There are three Information Collection's (ICs) that fall within OMB Control No. 3038–0052. The changes in the Final rules adopted herein only pertain to IC: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations and relate only to amendments to Regulation 1.52, which has been reduced by 1 burden hour per respondent. Additionally, the number of respondents has decreased from 15 to 14.

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Amended Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 and the Code of Federal Regulations, the Department of Defense announces a meeting of the Air University Board of Visitors.

DATES: The meeting will take place on Monday, 8 April 2019, from 8:00 a.m. to approximately 4:30 p.m. and Tuesday, 9 November, 2019, from 8:00 a.m. to approximately 4:30 p.m. Central Standard Time.

ADDRESSES: The meeting will be held in the Air University Commander's Conference Room located in Building 800 at Maxwell Air Force Base, AL.

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.

SUPPLEMENTARY INFORMATION: 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.

Due to unforeseen circumstances, the Air University Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its April 8 thru 9, 2019 meeting of the Air University Board of Visitors, as announced in Vol. 84, FR 11529, or a waiver to the 15-calendar day notification requirement. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement for the meeting in question along with the amended meeting notice that addresses this oversight.

Board of Visitors (BOV) Meeting Agenda (Draft) Maxwell AFB

Purpose of Meeting: For the AU BOV to provide sound professional counsel that will inform decision-making in areas of education, scholarship and leadership.

Read-Aheads via link to AU BOV website:

1. Bylaws & Self-evaluation Drafts
2. SACS Report
3. AU Next Model
4. AU Strategic Plan
5. AU Annual Report
6. AU Omnibus
7. Commander's Guidance Memo

Travel: 7 April 2019

- Arrivals at Montgomery Regional Airport (MGM); travel to hotel via taxi/rental car
- Hotel Location (Maxwell *Protocol Office will handle hotel arrangements/reservations*): University Inn @Maxwell AFB, 450 Lemay Plaza Montgomery, AL 36112

Day 1: 8 April 2019

Attire: Long Sleeve Blues and Business Casual for all events

Meeting Location: AU Conference Room, BLDG 800, Commander's Conference Room

7:00 a.m. Depart for AU Headquarters (via surrey)
- Breakfast (TBD—Protocol will arrange)

8:00 a.m. Call to Order—Welcome—*Chair (Bonner?)*

8:05 a.m. Designated Federal Officer—*Dr. Yolanda Williams*

8:10 a.m. Opening Remarks—*Lt Gen Anthony Cotton, Commander and President*
- *AU Next Initiative*
- *AFIT Taskforce*
- *Undergraduate Education and CCAF Task Force*

8:40 a.m. AFIT Subcommittee Minutes—*Chair Dr. Cross*

9:00 a.m. BOV Administrative Matters—*Drs. Chris Cain &Yolanda Williams*
- *Nominations Status*
- *Bylaws Update*
- *Self-Evaluation Update*
- *Meeting Schedule Update*

9:30 a.m. Academic Affairs Report—*Dr. Chris Cain*
- *Accreditation Update (SACS & HLC)*
- *Omnibus Overview*
- *Education Program Review*

10:00 a.m. Break

10:15 p.m. FY18 Financial Review and FY19 Financial Status—Mr. Douglas

10:45 a.m. Eaker Center Undergraduate Programs Presentation—TBD
- *Leadership Development Program*
- *Civilian Associate degree*

11:15 a.m. Community College of the Air Force Programs Presentation—TBD
- *Undergraduate (AAS) degrees*

12:00 p.m. Lunch with AU Faculty Senate @AU Conference Room

1:15 p.m. Depart for AWC (via surrey)
- *BOV meet w/students and faculty (Grand Strategy Seminar)*

4:00 p.m. Day 1 Wrap up and Closing Remarks

6:00 p.m. Dinner at Currie House—*Gen Cotton and Mrs Cotton*

7:30 p.m. Adjourned For the Day

Day 2: 9 April 2019

Attire: Long Sleeve Blues and Business Casual for all events

Meeting Location: Barnes Center—AFCDA Conference Room (TBD)

7:00 a.m. Depart for Barnes Center (via surrey)
- Breakfast (TBD—Protocol will arrange)

8:00 a.m. Day 2 Kickoff Undergraduate Education Transformation Initiative—*Chair*

Note: To complement AU's strategic planning process the BOV shall provide external perspectives of enlisted undergraduate education programs and services.

8:15 a.m. *Question #1:* What does the Community College of the Air Force need to look like in the next 2, 5 and 10 years? *(Consider emerging demands)*

10:30 a.m. Break and Group Photo

12:00 a.m. Working Lunch, Continued Group Discussions and Report Development

1:00 p.m. *Question #2:* While understanding the significance of enlisted/undergraduate education in the past, how might the Community College of the Air Force evolve in response to the Air Force needs?

2:45 p.m. BREAK

3:00 p.m. Formulate Recommendations

4:00 p.m. Executive Session and Out-brief—TBD

4:30 p.m. Day 2 Wrap up and Closing Remarks

Carlinda N. Lotson,

Air Force Federal Register Liaison Officer.

[FR Doc. 2019–06403 Filed 4–2–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Service of Process Notification for Child Support and/or Alimony Allotments

AGENCY: Office of the Under Secretary of Defense (Comptroller), DoD.

ACTION: Notice.

SUMMARY: The processing of statutory allotments for child support and/or alimony from the pay of active duty military members is governed by statute. Upon proper notification from an authorized person, the Defense Finance and Accounting Service (DFAS) will start a statutory child or child and spousal support allotment from the pay and allowances of a member on extended active duty when the member has failed to make periodic payments, under a support order, in an amount equal to the support payable for 2 months or longer. This **Federal Register** notice provides the requirements of the notification to DFAS and the DFAS Designated Official's address for submitting the notification.

FOR FURTHER INFORMATION CONTACT: Kellie Allison at 703–614–0410.

SUPPLEMENTARY INFORMATION:

Background

The DoD published a final rule in this issue of the **Federal Register** removing 32 CFR part 54, DoD's regulation that relates to allotments for child and spousal support. The statutorily required child or child and spousal support allotments in 42 U.S.C. 665 cover members of the Military Services on extended active duty. DoD's internal policy is located in the DoD Financial Management Regulation, Volume 7A, Chapter 41 ''Garnishments and Other Involuntary Allotments'' (available at *http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a_41_Dec10.pdf*). Although DoD is

removing this CFR part, this **Federal Register** notice is being published to provide the requirements of the notification to DFAS and the DFAS Designated Official's address for submitting the notification.

Authorized Person

An authorized person is any agent or attorney of any state having in effect a plan approved under 42 U.S.C. 651 *et seq.,* who has the duty or authority to seek recovery of any amounts owed by a member of the Military Services as child or child and spousal support; and the court that has the authority to issue an order against a member of the Military Services for the support and maintenance of a child, or any agent of such court.

Notice to Designated Official

An authorized person will send the DFAS designated official a signed notice that includes:

—A statement that delinquent support payments equal or exceed the amount of support payable for 2 months under a support order, and a request that an allotment be established;
—A certified copy of the support order. If the support order, on its face, appears to conform to the laws of the jurisdiction from which it was issued, then the designated official will not be required to ascertain whether the authority that issued the order had obtained personal jurisdiction over the member;
—The amount of the monthly support payment. Such amount may include arrearages, if a support order specifies the payment of such arrearages. The notice will indicate how much of the amount payable will be applied toward liquidation of the arrearages;
—A statement that delinquent support payments are more than 12 weeks in arrears, if appropriate;
—The following information that identifies the member:
  —Full name;
  —Social security number; and
  —Military Service of the member;
—The full name and address of the allottee. The allottee will be an authorized person, or designee, or the recipient named in the support order;
—Any limitations on the duration of the support allotment; and
—A certification that the official sending the notice is an authorized person.

The notice can be mailed or delivered in person to the designated official. The designated official will note the date and time of receipt on the notice.

The notice is effective when it is received in the office of the designated official.

DFAS Designated Official

The designated official is the DFAS Site Director or designee authorized to receive and to process the notification. The DFAS designated official and address is: Director, Garnishment Operations, DFAS Cleveland, P.O. Box 998002, Cleveland, OH 44199–8002.

Dated: March 29, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–06477 Filed 4–2–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense.

ACTION: Notice of Federal Advisory Committee closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Strategic Command Strategic Advisory Group will take place.

DATES: Day 1—Closed to the public Thursday, May 2, 2019, from 8:00 a.m. to 4:00 p.m. and Day 2—Closed to the public Friday, May 3, 2019, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Trefz, Jr., Designated Federal Officer, (402) 294–4102 (Voice), (402) 294–3128 (Facsimile), *john.l.trefz.civ@mail.mil* (Email). Mailing address is 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140. This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. Appendix), the Government Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General John E. Hyten, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.140(c), the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: March 29, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–06476 Filed 4–2–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0096]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence, 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 May 3, 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: Department of Defense NISP Contractor Classification System; DD Form 254; OMB Control Number 0704–0567.

Type of Request: Revision.

Number of Respondents: 3,211.

Responses per Respondent: 10.

Annual Responses: 32,110.

Average Burden per Response: 70 minutes.

Annual Burden Hours: 37,462.

Needs and Uses: This collection is a revision to the collection under OMB Control Number 0704–0567 (DD254) approved in November 2017. Pursuant to 48 CFR, part 27, in conjunction with subpart 4.4 of the Federal Acquisition Regulation, contracting officers shall determine whether access to classified information may be required by a contractor during contract performance. When access to classified information is required, DoD Components shall use the ''Contract Security Classification Specification,'' DD Form 254, as an attachment to contracts or agreements requiring access to classified information by U.S. contractors. The NISP Contract Classification System (NCCS) will be the new electronic repository for the DD254. It will expedite the processing and distribution of contract classification specifications for contracts requiring access to classified information. NCCS also has a built-in automated process for the Request for Approval to Subcontract and will provide workflow support for the Facility Clearance Request (FCL) and National Interest Determination (NID) processes. Respondents can register for and request access to NCCS at: *https://wawf.eb.mil/.* This website is Common Access Card (CAC) enabled and accessible by government contractors.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–06410 Filed 4–2–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2019–OCTAE–0007]

Proposed Requirements and Definitions—Tribally Controlled Postsecondary Career and Technical Institutions Program

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Proposed requirements and definitions.

SUMMARY: The Assistant Secretary for Career, Technical, and Adult Education proposes requirements and definitions under the Tribally Controlled Postsecondary Career and Technical Institutions Program (TCPCTIP), Catalog of Federal Domestic Assistance (CFDA) number 84.245. The Assistant Secretary may use these requirements and definitions for a competition in fiscal year (FY) 2019 and in later years. We propose these requirements and definitions to clarify the circumstances under which stipends may be paid to students attending tribally controlled postsecondary career and technical institutions and to establish requirements applicants must meet to demonstrate that they (1) are eligible for assistance under TCPCTIP and (2) will use grant funds in accordance with statutory requirements.

DATES: We must receive your comments on or before May 3, 2019.

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

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use *Regulations.gov*.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this notice of proposed requirements and definitions, address them to Kiawanta Hunter-Keiser, U.S. Department of Education, 400 Maryland Avenue SW, Room 11–119, Potomac Center Plaza (PCP), Washington, DC 20202–7241.

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

FOR FURTHER INFORMATION CONTACT: Kiawanta Hunter-Keiser, U.S. Department of Education, 400 Maryland Avenue SW, Room 11–119, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7724. Email: *Kiawanta.Hunter-Keiser@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:

Invitation to Comment: We invite you to submit comments regarding the proposed requirements and definitions. To ensure that your comments have maximum effect in developing the notice of final requirements and definitions, we urge you to identify clearly the specific proposed requirement or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed requirements and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed requirements and definitions by accessing *Regulations .gov*. You may also inspect the comments in person in Room 11–119, PCP, 400 Maryland Avenue SW, Washington, DC, between 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Purpose of Program: Section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224) (Perkins V or the Act) authorizes the Secretary to make grants to tribally controlled postsecondary career and technical institutions that do not receive Federal support under Title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1802 *et seq.*) or the Navajo Community College Act (Pub. L. 92–189; 85 Stat. 646) for career and technical education programs for Indian students and for the institutional support costs of the grant.

Program Authority: Section 117 of Perkins V (20 U.S.C. 2327).

Proposed Requirements

Application Requirements: The Assistant Secretary proposes the following application requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Background: We propose to establish six application requirements for TCPCTIP competitions to enable us to determine the eligibility of an applicant for assistance; evaluate the extent to which its proposed uses of funds are allowable under section 117; determine the extent to which the grant amount it has requested is reasonable and necessary; identify the goals and objectives that the applicant hopes to achieve with the proposed project; and determine whether the procedures the applicant proposes to use with respect to the award of student stipends are consistent with the program requirements related to student stipends that we also propose to establish. The six proposed application requirements are similar to the application requirements used in the notice inviting applications for the last TCPCTIP competition that we held in FY 2007 (see 72 FR 27297, May 15, 2007) (May 2007 Notice) following the enactment of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV).

The proposed application requirements omit an application requirement from the May 2007 Notice that asked applicants to identify ''long-range and short-range needs,'' including the ''institution's plans for the placement of students (*e.g.,* placement into additional training or education, military service, or employment).'' We do not include this May 2007 application requirement because it duplicates proposed application requirement (d), which asks applicants to set out ''goals and objectives'' for the proposed project.

Proposed Application Requirements: To receive a TCPCTIP grant, an applicant must include one or more of the following in its application:

(a) Documentation showing that the applicant is eligible, according to each of the requirements in the Eligible Applicants section of this notice (and pursuant to sections 117(a) and (d) of Perkins V), including meeting the definition of the terms ''tribally controlled postsecondary career and technical institution'' and ''institution of higher education'' (*e.g.,* proof of the institution's accreditation status) and certification that the institution does not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (Pub. L. 92–189; 85 Stat. 646).

(b) Descriptions of the career and technical education programs, including academic courses, to be supported under the proposed TCPCTIP project. Projects funded under this competition must propose organized educational activities that meet the definition of career and technical education, as that term is defined in section 3(5) of the Act.

(c) The estimated number of students to be served by the proposed project in each career and technical education program in each year of the project.

(d) Goals and objectives for the proposed project, including how the attainment of the goals and objectives would further Tribal economic development plans, if any.

(e) A detailed budget identifying the costs to be paid with funds under this program for each year of the project period, and resources available from other Federal, State, and local sources, including any student financial aid, that will be used to achieve the goals and objectives of the proposed project.

(f) A description of the procedure the applicant intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

Program Requirements: The Assistant Secretary proposes the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Background: The payment of stipends to students attending tribally controlled postsecondary career and technical institutions receiving assistance under section 117 of the Act was first authorized by the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105–332), which was enacted on October 31, 1998. The Department established requirements for the payment of such student stipends in the notice inviting applications for new awards for FY 2001, which was the first grant competition conducted under the revised authority (see 66 FR 17035, March 28, 2001) (March 2001 Notice). Among other requirements, the March 2001 Notice required that, to be eligible for a stipend, a student must—

(1) Be enrolled in a career and technical education program funded under section 117 as at least a half-time student;

(2) Be in regular attendance and meet the tribally controlled postsecondary institution's attendance requirement;

(3) Maintain satisfactory progress in his or her course of study according to the tribally controlled institution's published standards of satisfactory progress; and

(4) Have an acute economic need (defined as an income at or below the poverty level) that prevents participation in a project funded under this program that cannot be met through a work-study program.

The March 2001 Notice also required that the amount of the stipend be determined by multiplying the number of hours a student actually attended a program by the greater of the minimum hourly wage that was prescribed by State or local law, or by the minimum hourly wage that is established under the Fair Labor Standards Act. However, an institution could only award a stipend to a student if, and to the extent that the stipend combined with other resources the student received did not exceed the student's financial need, which was defined as the difference between the student's cost of attendance and the financial aid or other resources that would be used to defray the costs of the student participating in the project.

Authorization for section 117 grantees to pay student stipends was continued in Perkins IV. The May 2007 Notice established the same requirements for the payment of student stipends as the March 2001 Notice, except that the May 2007 Notice—

(1) Authorized payment of stipends to students whose attendance status was less than half-time;

(2) Permitted payment of a stipend to a student only when the student was taking a course for the first time;

(3) Did not define the term ''acute economic need''; and

(4) Directed applicants to describe the procedure they intended to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

For future TCPCTIP competitions, we propose to establish the same requirements for the payment of student stipends that were established by the May 2007 Notice. We believe these requirements have worked well to ensure that TCPCTIP funds are used appropriately to assist only those students with an acute economic need that prevents their participation and that cannot be met through a work-study program. We note also that comparable requirements for the payment of student stipends have worked well and without controversy for nearly two decades in another program that provides assistance for career and technical education for Native American students—the Native American Career and Technical Education Program, authorized by section 116 of Perkins V. Finally, we note that the continuation of the May 2007 student stipend requirements is consistent with the Principles of Economic Mobility in Executive Order 13828, Reducing Poverty in America by Promoting Opportunity and Economic Mobility, which emphasize that work-capable individuals should be engaged in a work activity, which may include career and technical education, as a condition of receiving means-tested public assistance.

Proposed Program Requirements: (a) Stipends may be paid to enable students to participate in a TCPCTIP career and technical education program.

(1) To be eligible for a stipend, a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a TCPCTIP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that prevents participation in a project funded under this program without a stipend and that cannot be met through a work-study program.

(b) The amount of a stipend is based on the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(c) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A ''student's financial need'' is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in a TCPCTIP project.

(d) To calculate the amount of a student stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the greater of the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 × 20 = $145).

(e) Grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a TCPCTIP, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the TCPCTIP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700–75.702, 75.730, and 75.731)

(f) An eligible student may receive a stipend when taking a course for the first time. However, a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

Proposed Definitions

Background: We propose to establish a definition of ''institutional support of career and technical education,'' a term used in the list of allowable expenses identified in section 117(e)(1)(D) of the Act. To clarify what direct expenditures this term includes, we propose to define this term to mean administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 and administering a grant awarded under section 117.

Under this proposed definition, for example, the costs associated with the accreditation of a particular career and technical education program funded under section 117 would be allowable direct costs, as would any expenditures related to administering a section 117 grant, such as the salary of a project director. In contrast, any general administrative expenses incurred by an institution, such as the costs associated with the accreditation of the overall institution itself, would not be allowable direct costs under section 117. However, there would be no limitation on the indirect costs a section 117 grantee could charge to its grant. Moreover, consistent with section 117(c)(3), a grantee could use an unrestricted rate in calculating the indirect costs that may be charged to the grant.

We believe this proposed definition is consistent with the purposes of TCPCTIP and other pertinent provisions of section 117. For example, section 117(a) indicates that the grants made under section 117 are to ''provide basic support for the education and training of Indian students,'' while section 117(b) states that grant funds are to be ''used for career and technical education programs for Indian students and for the institutional support costs of the grant.'' The March 2001 and May 2007 Notices included comparable clarifications. We also propose to establish a definition of ''stipend'' that is intended to clarify its purpose and the circumstances under which stipends may be paid to students. The proposed definition is identical to the definition of ''stipend'' that was used in the March 2001 and May 2007 Notices.

Proposed Definitions: The Assistant Secretary proposes the following definitions for this program. We may apply one or both of these definitions in any year in which this program is in effect.

Institutional support of career and technical education means administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 of the Act and administering a grant awarded under section 117.

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Final Requirements and Definitions: We will announce the final requirements and definitions in a document published in the **Federal Register**. We will determine the final requirements and definitions after considering responses to the proposed requirements and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these requirements and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. The proposed priority and requirements would be utilized in connection with a discretionary grant program and, therefore, Executive Order 13771 is not applicable.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed requirements and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined are necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that these proposed requirements and definitions would not impose significant costs on tribally controlled postsecondary career and technical institutions eligible for

assistance under section 117 of Perkins V. We also believe that the benefits of implementing the proposed requirements and definitions justify any associated costs.

The Department believes that the proposed application requirements would help to ensure that: Only institutions eligible for assistance under section 117 of the Act receive such assistance; grants provided under section 117 of the Act are awarded only for allowable, reasonable, and necessary costs; and eligible applicants consider carefully in preparing their applications how the grants may be used to improve career and technical education programs and the outcomes of the students who enroll in them. The program requirements and related definitions are necessary to ensure that taxpayer funds are expended appropriately.

The Department further believes that the costs imposed on an applicant by the proposed requirements and definitions would be largely limited to the paperwork burden related to meeting the application requirements and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. Entities selected for awards under section 117 of the Act would be able to pay the costs associated with implementing the program requirements related to student stipends with grant funds. Thus, the costs of these proposed requirements and definitions would not be a significant burden for any eligible applicant.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995 (PRA): These proposed requirements and definitions do not contain any information collection requirements subject to the PRA. The Department is aware of fewer than nine tribally controlled postsecondary career and technical institutions that meet the eligibility requirements of section 117 of the Act and could thus be expected to apply in a response to a notice inviting applications. Information collection requirements imposed on nine or fewer individuals or entities are not subject to the PRA.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are institutions of higher education. We believe that the costs imposed on an applicant by the proposed requirements and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposed requirements and definitions would outweigh any costs incurred by the applicant.

Participation in TCPCTIP is voluntary. For this reason, the proposed application requirements would impose no burden on small entities unless they applied for funding under TCPCTIP. We expect that in determining whether to apply for TCPCTIP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a TCPCTIP grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application. The likely benefits of applying for a TCPCTIP grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the identification of long- and short-range plans for the institution and its career and technical education programs. Additionally, proposed application requirement (a), which would direct applicants to document their eligibility under section 117 of the Act, would focus the attention of all prospective applicants on the eligibility requirements in section 117 of the Act and help discourage entities that do not meet them from incurring the time and expense of preparing a full application. The costs of meeting the other proposed requirements related to student stipends could be paid with grant funds and entities that do not receive a grant would not be required to meet them.

We believe that the proposed requirements and definitions would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 29, 2019.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2019–06491 Filed 4–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0045]

Agency Information Collection Activities; Comment Request; Part 601 Preferred Lender Arrangements

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 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–0045. 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 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Part 601 Preferred Lender Arrangements.

OMB Control Number: 1845–0101.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households; Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 18,623,389.

Total Estimated Number of Annual Burden Hours: 3,801,989.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a section of the regulations governing private education loans offered at covered institutions. These regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to ensure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. The Department is submitting the unchanged Private Education Loan Applicant Self-Certification for OMB's continued approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available, the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

Dated: March 29, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06467 Filed 4–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0039]

Agency Information Collection Activities; Comment Request; 2020–21 Free Application for Federal Student Aid (FAFSA)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 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–0039. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact the Applicant Products Team at *StudentExperienceGroup@ed.gov,* or Beth Grebeldinger at 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised and continuing collections of information. This helps ED assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ED'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. ED is especially interested in public comments addressing the following issues: (1) Is this collection necessary to the proper function of ED; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ED enhance the quality, utility, and clarity of the information to be collected; and (5) how might ED 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 the Collection: 2020–21 Free Application for Federal Student Aid.

OMB Control Number: 1845–0001.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 40,987,637.

Total Estimated Number of Annual Burden Hours: 26,311,037.

Abstract: Section 483, of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education '' . . . shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance . . . ''.

The determination of need and eligibility are for the following Title IV, HEA, federal student financial assistance programs: The Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS)); the William D. Ford Federal Direct Loan (Direct Loan) Program; the Teacher Education Assistance for College and Higher Education (TEACH) Grant; the Children of Fallen Heroes Scholarship; and the Iraq and Afghanistan Service Grant.

Federal Student Aid (FSA), an office of the U.S. Department of Education, subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the *Free Application for Federal Student Aid* (FAFSA®). After submission and processing of the FAFSA form, an applicant receives a *Student Aid Report* (SAR), which is a summary of the processed data they submitted on the FAFSA form. The applicant reviews the SAR, and, if necessary, will make corrections or updates to their submitted FAFSA data. Institutions of higher education listed by the applicant on the FAFSA form also receive a summary of processed data submitted on the FAFSA form which is called the Institutional Student Information Record (ISIR).

ED and FSA seek OMB approval of all application components as a single ''collection of information''. The aggregate burden will be accounted for under OMB Control Number 1845–0001. The specific application components, descriptions, and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA		
FAFSA	The electronic version of the FAFSA form completed by applicants	Submitted by the applicant via *fafsa.gov* or the myStudentAid mobile app.
FAFSA—Renewal	The electronic version of the FAFSA form completed by applicants who have previously completed the FAFSA form.	
FAFSA—EZ	The electronic version of the FAFSA form for applicants who qualify for the Automatic Zero (Auto Zero) needs analysis formula and the applicant's State of Legal Residence is one that allows for the skipping of questions not used in the EFC calculation.	
FAFSA—EZ Renewal	The electronic version of the FAFSA form for applicants who have previously completed the FAFSA form and who qualify for the Automatic Zero (Auto Zero) needs analysis formula and the applicant's State of Legal Residence is one that allows for the skipping of questions not used in the EFC calculation.	
FAA Access	Online tool that a financial aid administrator (FAA) utilizes to submit a FAFSA form.	Submitted through *faaaccess.ed.gov* by an FAA on behalf of an applicant.
FAA Access—Renewal	Online tool that an FAA can utilize to submit a Renewal FAFSA form	
FAA Access—EZ	Online tool that an FAA can utilize to submit a FAFSA form for applicants who qualify for the Auto Zero needs analysis formula and the applicant's State of Legal Residence is one that allows for the skipping of questions not used in the EFC calculation.	
FAA Access—EZ Renewal	Online tool that an FAA can utilize to submit a FAFSA form for applicants who have previously completed the FAFSA form and who qualify for the Auto Zero needs analysis formula and the applicant's State of Legal Residence is one that allows for the skipping of questions not used in the EFC calculation.	
Electronic Other	This is a submission done by an FAA, on behalf of the applicant, using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Printed FAFSA	The printed version of the PDF FAFSA for applicants who are unable to access the Internet or complete the form using *fafsa.gov* or the myStudentAid mobile app.	Mailed by the applicant.
Correcting Submitted FAFSA Information and Reviewing FAFSA Information		
fafsa.gov—Corrections	Any applicant who has a Federal Student Aid ID (FSA ID)—regardless of how they originally applied—may make corrections.	Submitted by the applicant via *fafsa.gov*.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS—Continued

Component	Description	Submission method
Electronic Other—Corrections	With the applicant's permission, corrections can be made by an FAA using the EDE.	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper SAR—This is a SAR and an option for corrections.	The full paper summary that is mailed to paper applicants who did not provide an email address and to applicants whose records were rejected due to critical errors during processing. Applicants can write corrections directly on the paper SAR and mail for processing.	Mailed by the applicant.
FAA Access—Corrections	An institution can use FAA Access to correct the FAFSA form	Submitted through *faaaccess.ed.gov* by an FAA on behalf of an applicant.
Internal Department Corrections	The Department will submit an applicant's record for system-generated corrections to the Central Processing System. There is no burden to the applicants under this correction type as these are system-based corrections.	These corrections are system-generated.
Federal Student Aid Information Center (FSAIC) Corrections.	Any applicant, with their Data Release Number (DRN), can change the postsecondary institutions listed on their FAFSA form or change their address by calling FSAIC.	These changes are made directly in the CPS by an FSAIC representative.
SAR Electronic (eSAR)	The eSAR is an online version of the SAR that is available on *fafsa.gov* to all applicants with an FSA ID. Notification for the eSAR is sent to students who applied electronically or by paper and provided a valid email address. These notifications are sent by email and include a hyperlink that takes the user to the *fafsa.gov* site.	Cannot be submitted for processing.
SAR Acknowledgement	The SAR Acknowledgement is a condensed paper SAR that is mailed to applicants who applied electronically but did not provide a valid email address.	Cannot be submitted for processing.

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM) measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and, in terms of burden, the average applicant's experience. Key determinants of the ABM include:

- The total number of applicants that will potentially apply for federal student aid;
- How the applicant chooses to complete and submit the FAFSA form (*e.g.,* by paper or electronically);
- How the applicant chooses to submit any corrections and/or updates (*e.g.,* the paper SAR or electronically);
- The type of SAR document the applicant receives (eSAR, SAR acknowledgment, or paper SAR);
- The formula applied to determine the applicant's expected family contribution (EFC) (full need analysis formula or Automatic Zero); and
- The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2020–21 is based upon two factors—estimating the growth rate of the total enrollment into post-secondary education and applying the growth rate to the FAFSA submissions. The ABM is also based on the application options available to students and parents. ED accounts for each application component based on analytical tools, survey information and other ED data sources.

For 2020–21, ED is reporting a net burden increase of 2,358,697 hours.

Dated: March 26, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06160 Filed 4–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher Quality Partnership Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2019 for the Teacher Quality Partnership Grant Program, Catalog of Federal Domestic Assistance (CFDA) number 84.336S.

DATES:

Applications Available: April 3, 2019.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to post pre-recorded informational webinars designed to provide technical assistance to interested applicants for grants under the Teacher Quality Partnership (TQP) program. These informational webinars will be available on the TQP web page shortly after this notice is published in the **Federal Register** at *http://innovation.ed.gov/what-we-do/teacher-quality/teacher-quality-partnership/applicant-info-and-eligibility/.*

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged, but not required, to submit a notice of intent to apply by May 3, 2019.

Deadline for Transmittal of Applications: May 20, 2019.

Deadline for Intergovernmental Review: July 17, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to

Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), or at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Mia Howerton, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E247, Washington, DC 20202–5960. Telephone: (202) 205–0147. Email: *Mia.Howerton@ed.gov* or *tqpartnership@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the TQP program are to improve student achievement; improve the quality of prospective and new teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers; hold teacher preparation programs at institutions of higher education (IHEs) accountable for preparing teachers who meet applicable State certification and licensure requirements; and recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force.

Background: The TQP program supports eligible partnerships that include partner institutions, high-need local educational agencies (LEAs), and high-need schools served by such LEAs or high-need early childhood education (ECE) programs. Under section 202(d) and (e) of the Higher Education Act of 1965, as amended (HEA), these partnerships must implement either (a) teacher preparation programs at the pre-baccalaureate or ''fifth-year'' level that include specific reforms in IHEs' existing teacher preparation programs; or (b) teacher residency programs for individuals who are recent graduates with strong academic backgrounds or are mid-career professionals from outside the field of education.

In the FY 2019 TQP competition, we will only support projects that prepare teachers through the implementation of teacher residency programs. The requirements for such a teacher residency program are further explained in this notice under the Absolute Priority section. We also include two competitive preference priorities: One for projects that propose to prepare teachers to deliver rigorous instruction and improve student achievement in computer science and another for novice applicants.

On September 25, 2017, the President signed the Presidential Memorandum on expanding access to high-quality science, technology, engineering and math (STEM) and computer science education for K–12 students (82 FR 45417). This Memorandum directed the Secretary to place high-quality STEM education, particularly computer science education, at the forefront of the Department's priorities. The Department recognizes that STEM and computer science education play a critical role in ensuring that all students are prepared for college and careers, which is why prioritizing the preparation of effective educators in these areas is so crucial. Therefore, in this competition, the Department is prioritizing applications from partnerships that prepare educators to deliver rigorous instruction in computer science and improve student achievement.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 202(e) of the HEA. Competitive Preference Priority 1 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). Competitive Preference Priority 2 is from 34 CFR 75.225.

Absolute Priority: For FY 2019, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

Consistent with HEA section 203(b) (20 U.S.C. 1022b(b)), applications will be peer reviewed and scored based on the TQP program's selection criteria and competitive preference priorities.

This priority is:

Absolute Priority: Partnership Grants for the Establishment of Effective Teaching Residency Programs.

I. *In general.* Under this priority, an eligible partnership must carry out an effective teaching residency program that includes all of the following activities:

(a) Supporting a teaching residency program described in paragraph II for high-need subjects and areas, as determined by the needs of the high-need LEA in the partnership;

(b) Placing graduates of the teaching residency program in cohorts that facilitate professional collaboration, both among graduates of the teaching residency program and between such graduates and mentor teachers in the receiving school;

(c) Ensuring that teaching residents who participate in the teaching residency program receive—

(1) Effective pre-service preparation as described in paragraph II;

(2) Teacher mentoring;

(3) Support required through the induction program as the teaching residents enter the classroom as new teachers; and

(4) The preparation described below:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in classrooms in high-need schools served by the high-need local educational agency in the eligible partnership, and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at early childhood education programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction.

(ii) Integrate pedagogy and classroom practice and promote effective teaching skills in academic content areas.

(iii) Provide high-quality teacher mentoring.

II. *Teaching Residency Programs.*

(a) *Establishment and design.* A teaching residency program under this priority is a program based upon models of successful teaching residencies that serve as a mechanism to prepare teachers for success in the high-need schools in the eligible partnership, and must be designed to include the following characteristics of successful programs:

(1) The integration of pedagogy, classroom practice, and teacher mentoring;

(2) Engagement of teaching residents in rigorous graduate-level course work leading to a master's degree while undertaking a guided teaching apprenticeship;

(3) Experience and learning opportunities alongside a trained and experienced mentor teacher—

(i) Whose teaching shall complement the residency program so that classroom clinical practice is tightly aligned with coursework;

(ii) Who shall have extra responsibilities as a teacher leader of the teaching residency program, as a mentor for residents, and as a teacher coach

during the induction program for new teachers; and for establishing, within the program, a learning community in which all individuals are expected to continually improve their capacity to advance student learning; and

(iii) Who may be relieved from teaching duties as a result of such additional responsibilities;

(4) The establishment of clear criteria for the selection of mentor teachers based on measures of teacher effectiveness and the appropriate subject area knowledge. Evaluation of teacher effectiveness must be based on, but not limited to, observations of the following—

(i) Planning and preparation, including demonstrated knowledge of content, pedagogy, and assessment, including the use of formative and diagnostic assessments to improve student learning;

(ii) Appropriate instruction that engages students with different learning styles;

(iii) Collaboration with colleagues to improve instruction;

(iv) Analysis of gains in student learning, based on multiple measures that are valid and reliable and that, when feasible, may include valid, reliable, and objective measures of the influence of teachers on the rate of student academic progress; and

(v) In the case of mentor candidates who will be mentoring new or prospective literacy and mathematics coaches or instructors, appropriate skills in the essential components of reading instruction, teacher training in literacy instructional strategies across core subject areas, and teacher training in mathematics instructional strategies, as appropriate;

(5) Grouping of teaching residents in cohorts to facilitate professional collaboration among such residents;

(6) The development of admissions goals and priorities—

(i) That are aligned with the hiring objectives of the LEA partnering with the program, as well as the instructional initiatives and curriculum of such agency, in exchange for a commitment by such agency to hire qualified graduates from the teaching residency program; and

(ii) Which may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession; and

(7) Support for residents, once the teaching residents are hired as teachers of record, through an induction program, professional development, and networking opportunities to support the residents through not less than the residents' first two years of teaching.

(b) *Selection of individuals as teacher residents.*

(1) *Eligible individual.* In order to be eligible to be a teacher resident in a teaching residency program under this priority, an individual shall—

(i) Be a recent graduate of a four-year IHE or a mid-career professional from outside the field of education possessing strong content knowledge or a record of professional accomplishment; and

(ii) Submit an application to the teaching residency program.

(2) *Selection criteria for teaching residency program.* An eligible partnership carrying out a teaching residency program under this priority shall establish criteria for the selection of eligible individuals to participate in the teaching residency program based on the following characteristics—

(i) Strong content knowledge or record of accomplishment in the field or subject area to be taught;

(ii) Strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests; and

(iii) Other attributes linked to effective teaching, which may be determined by interviews or performance assessments, as specified by the eligible partnership.

(c) *Stipends or salaries; applications; agreements; repayments.*

(1) *Stipends or salaries.* A teaching residency program under this priority shall provide a one-year living stipend or salary to teaching residents during the teaching residency program.

(2) *Applications for stipends or salaries.* Each teacher residency candidate desiring a stipend or salary during the period of residency shall submit an application to the eligible partnership at such time, and containing such information and assurances, as the eligible partnership may require.

(3) *Agreements to serve.* Each application submitted under paragraph II–(c)(2) of this priority shall contain or be accompanied by an agreement that the applicant will—

(i) Serve as a full-time teacher for a total of not less than three academic years immediately after successfully completing the teaching residency program;

(ii) Fulfill the requirement under paragraph II–(c)(3)(i) of this priority by teaching in a high-need school served by the high-need LEA in the eligible partnership and teach a subject or area that is designated as high-need by the partnership;

(iii) Provide to the eligible partnership a certificate, from the chief administrative officer of the LEA in which the resident is employed, of the employment required under paragraph II–(c)(3)(i) and (ii) of this priority at the beginning of, and upon completion of, each year or partial year of service;

(iv) Meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, when the applicant begins to fulfill the service obligation under this clause; and

(v) Comply with the requirements set by the eligible partnership under paragraph II–(d) of this priority if the applicant is unable or unwilling to complete the service obligation required by paragraph II–(c)(3).

(d) *Repayments.*

(1) *In general.* A grantee carrying out a teaching residency program under this priority shall require a recipient of a stipend or salary under paragraph II–(c)(1) of this priority who does not complete, or who notifies the partnership that the recipient intends not to complete, the service obligation required by paragraph II–(c)(3) of this priority to repay such stipend or salary to the eligible partnership, together with interest, at a rate specified by the partnership in the agreement, and in accordance with such other terms and conditions specified by the eligible partnership, as necessary.

(2) *Other terms and conditions.* Any other terms and conditions specified by the eligible partnership may include reasonable provisions for pro rata repayment of the stipend or salary described in paragraph II–(c)(1) of this priority or for deferral of a teaching resident's service obligation required by paragraph II–(c)(3) of this priority, on grounds of health, incapacitation, inability to secure employment in a school served by the eligible partnership, being called to active duty in the Armed Forces of the United States, or other extraordinary circumstances.

(3) *Use of repayments.* An eligible partnership shall use any repayment received under this paragraph (d) to carry out additional activities that are consistent with the purpose of this priority.

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an

application, depending on the extent to which the application meets Competitive Preference Priority 1. We will award an additional five points to an application that meets all the requirements for Competitive Preference Priority 2. An application may receive a total of up to 10 additional points under the competitive preference priorities.

If an applicant chooses to address one or more of the competitive preference priorities, the project narrative section of its application must identify its response to the competitive preference priorities it chooses to address. The Department will not review or award points under these competitive preference priorities unless the applicant clearly identifies its response in its application. After review of the absolute priority, only applicants for which competitive preference points could enable them to be funded will have their responses to the competitive preference priorities reviewed and scored.

These priorities are:

Competitive Preference Priority 1 (up to five points).

Projects designed to improve student achievement or other educational outcomes in computer science (as defined in this notice) by increasing the number of educators adequately prepared to deliver rigorous instruction in STEM fields, including computer science, through recruitment, evidence-based (as defined in 34 CFR 77.1) professional development strategies for current STEM educators, or evidence-based retraining strategies for current educators seeking to transition from other subjects to STEM fields.

Competitive Preference Priority 2 (five points).

Projects submitted by applicants that meet the definition of novice applicant (as defined in this notice) at the time they submit their application.

Invitational Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

The priority is:

Invitational Priority: Spurring Investment in Opportunity Zones.

Under this priority, an applicant may address one or both of the following priority areas:

(1) Propose to serve children or students who reside, or attend TQP project schools, in a qualified opportunity zone as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97). In addressing this priority, an applicant must provide the census tract number of the qualified opportunity zone for which it proposes to serve children or students and describe the extent to which the applicant will serve individuals in the Qualified Opportunity Zone(s). A list of qualified opportunity zones, with census tract numbers, is available at *www.cdfifund.gov/Pages/Opportunity-Zones.aspx;* or

(2) Demonstrate in its application that it has received or will receive financial assistance from a qualified opportunity fund under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for a purpose directly related to its proposed project. In addressing this priority, an applicant must identify the qualified opportunity fund from which it has received or will receive financial assistance and describe the extent to which the applicant will use the financial assistance for its proposed project.

Definitions: The definitions for ''Arts and sciences,'' ''Early childhood educator,'' ''Essential components of reading instruction,'' ''Exemplary teacher,'' ''High-need early childhood education (ECE) program,'' ''High-need local educational agency (LEA),'' ''High-need school,'' ''Highly competent,'' ''Induction program,'' ''Limited English proficient,'' ''Partner institution,'' Scientifically valid research,'' and ''Teacher mentoring'' are from section 200 of the HEA. The definition of ''Charter school'' is from section 7221i of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The definition for ''Professional development'' is from section 8101 of ESEA. The definitions for ''Demonstrates a rationale,'' ''Evidence-based,'' ''Experimental study,'' ''Logic model,'' ''Moderate evidence,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' ''Strong evidence,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1. The definition for ''Novice applicant'' is from 34 CFR 75.225. The definition for ''Computer science'' is from the Supplemental Priorities.

Arts and sciences means—

(a) When referring to an organizational unit of an IHE, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subject matter areas in which teachers provide instruction; and

(b) When referring to a specific academic subject area, the disciplines or content areas in which academic majors are offered by the arts and sciences organizational unit.

Charter school means a public school that—

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), 20 U.S.C. 1232g (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the IDEA (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—

(1) Admits students on the basis of a lottery, consistent with 20 U.S.C. 7221b(c)(3)(A) if more students apply for admission than can be accommodated; or

(2) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (1);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(m) May serve students in early childhood education programs or postsecondary students.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Early childhood educator means an individual with primary responsibility for the education of children in an ECE program.

Essential components of reading instruction means explicit and systematic instruction in—

(a) Phonemic awareness;

(b) Phonics;

(c) Vocabulary development;

(d) Reading fluency, including oral reading skills; and

(e) Reading comprehension strategies.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Exemplary teacher means a teacher who—

(a) Is a highly qualified teacher such as a master teacher;

(b) Has been teaching for at least five years in a public or private school or IHE;

(c) Is recommended to be an exemplary teacher by administrators and other teachers who are knowledgeable about the individual's performance;

(d) Is currently teaching and based in a public school; and

(e) Assists other teachers in improving instructional strategies, improves the skills of other teachers, performs teacher mentoring, develops curricula, and offers other professional development.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(a) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(b) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(c) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-need early childhood education (ECE) program means an ECE program serving children from low-income families that is located within the geographic area served by a high-need LEA.

High-need local educational agency (LEA) means an LEA—

(a)(1) For which not less than 20 percent of the children served by the agency are children from low-income families;

(2) That serves not fewer than 10,000 children from low-income families;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA; or

(4) That meets eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA; and—

(b)(1) For which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(2) For which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

Note: Information on how an applicant may demonstrate that a partner LEA meets this definition is included in the application package.

High-need school means a school that, based on the most recent data available, meets one or both of the following:

(a) The school is in the highest quartile of schools in a ranking of all schools served by an LEA, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in paragraphs (1) through (4).

(b) In the case of—

(1) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act; or

(2) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(c) The Secretary may, upon approval of an application submitted by an eligible partnership seeking a grant under this title, designate a school that does not qualify as a high-need school under this definition, as a high-need school for the purpose of this competition. The Secretary shall base the approval of an application for designation of a school under this clause on a consideration of the information required under section 200(11)(B)(ii) of the HEA, and may also take into account other information submitted by the eligible partnership.

Note: Information on how an applicant may demonstrate that a partner LEA meets this definition is included in the application package.

Highly competent, when used with respect to an early childhood educator, means an educator—

(a) With specialized education and training in development and education of young children from birth until entry into kindergarten;

(b) With—

(i) A baccalaureate degree in an academic major in the arts and sciences; or

(ii) An associate degree in a related educational area; and

(c) Who has demonstrated a high level of knowledge and use of content and pedagogy in the relevant areas associated with quality early childhood education.

Induction program means a formalized program for new teachers during not less than the teachers' first two years of teaching that is designed to provide support for, and improve the professional performance and advance the retention in the teaching field of, beginning teachers. Such program shall promote effective teaching skills and shall include the following components:

(a) High-quality teacher mentoring.

(b) Periodic, structured time for collaboration with teachers in the same department or field, including mentor teachers, as well as time for information-sharing among teachers, principals, administrators, other appropriate instructional staff, and participating faculty in the partner institution.

(c) The application of empirically-based practice and scientifically valid research on instructional practices.

(d) Opportunities for new teachers to draw directly on the expertise of teacher mentors, faculty, and researchers to support the integration of empirically-based practice and scientifically valid research with practice.

(e) The development of skills in instructional and behavioral interventions derived from empirically-based practice and, where applicable, scientifically valid research.

(f) Faculty who—

(1) Model the integration of research and practice in the classroom; and

(2) Assist new teachers with the effective use and integration of technology in the classroom.

(g) Interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers with respect to the learning process and the assessment of learning.

(h) Assistance with the understanding of data, particularly student achievement data, and the applicability of such data in classroom instruction.

(i) Regular and structured observation and evaluation of new teachers by multiple evaluators, using valid and reliable measures of teaching skills.

Limited English proficient,[1] when used with respect to an individual, means an individual—

(a) Who is aged 3 through 21;

(b) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(c)(1) Who was not born in the United States or whose native language is a language other than English;

(2)(i) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(ii) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(3) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(d) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(1) The ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3) of the ESEA;

(2) The ability to successfully achieve in classrooms where the language of instruction is English; or

(3) The opportunity to participate fully in society.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(a) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(1) Meets WWC standards with or without reservations;

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(3) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(4) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (c)(1), (2),

[1] ESEA uses the term ''English learner''; however, the term cross-referenced from the HEA is ''limited English proficient.''

and (3) of this definition may together satisfy this requirement.

Novice applicant means—

(a) Any applicant for a grant from the Department that—

(1) Has never received a grant or subgrant under the program from which it seeks funding;

(2) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the program from which it seeks funding; and

(3) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(b) In the case of a group application submitted in accordance with 34 CFR 75.127–75.129, a group that includes only parties that meet the requirements of paragraph (a) of this definition.

Partner institution means an IHE, which may include a two-year IHE offering a dual program with a partner four-year IHE, participating in an eligible partnership that has a teacher preparation program—

(a) Whose graduates exhibit strong performance on State-determined qualifying assessments for new teachers through—

(1) Demonstrating that 80 percent or more of the graduates of the program who intend to enter the field of teaching have passed all of the applicable State qualification assessments for new teachers, which shall include an assessment of each prospective teacher's subject matter knowledge in the content area in which the teacher intends to teach; or

(2) Being ranked among the highest-performing teacher preparation programs in the State as determined by the State—

(i) Using criteria consistent with the requirements for the State Report Card under section 205(b) of the HEA before the first publication of the report card; and

(ii) Using the State report card on teacher preparation required under section 205(b), after the first publication of such report card and for every year thereafter; and

(b) That requires—

(1) Each student in the program to meet high academic standards or demonstrate a record of success, as determined by the institution (including prior to entering and being accepted into a program), and participate in intensive clinical experience;

(2) Each student in the program preparing to become a teacher who meets the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA; and

(3) Each student in the program preparing to become an early childhood educator to meet degree requirements, as established by the State, and become highly competent.

Professional development means activities that—

(a) Are an integral part of school and LEA strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(b) Are sustained (not stand-alone, one-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—

(1) Improve and increase teachers'—

(i) Knowledge of the academic subjects the teachers teach;

(ii) Understanding of how students learn; and

(iii) Ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(2) Are an integral part of broad schoolwide and districtwide educational improvement plans;

(3) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(4) Improve classroom management skills;

(5) Support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(6) Advance teacher understanding of—

(i) Effective instructional strategies that are evidence-based; and

(ii) Strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(7) Are aligned with, and directly related to, academic goals of the school or LEA;

(8) Are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian Tribes (as applicable), and administrators of schools to be served under the ESEA;

(9) Are designed to give teachers of English learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(10) To the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(11) As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(12) Are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(13) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(14) Include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(15) Involve the forming of partnerships with IHEs, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the HEA (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(16) Create programs to enable paraprofessionals (assisting teachers employed by an LEA receiving assistance under part A of title I of the ESEA) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers;

(17) Provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the

knowledge and skills learned by the teachers are implemented in the classroom; and

(18) Where practicable, provide jointly for school staff and other ECE program providers, to address the transition to elementary school, including issues related to school readiness.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(1) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Scientifically valid research means applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(a) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(1) Meets WWC standards without reservations;

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(3) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(4) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (c)(1), (2), and (3) of this definition may together satisfy this requirement.

Teacher mentoring means the mentoring of new or prospective teachers through a program that—

(a) Includes clear criteria for the selection of teacher mentors who will provide role model relationships for mentees, which criteria shall be developed by the eligible partnership and based on measures of teacher effectiveness;

(b) Provides high-quality training for such mentors, including instructional strategies for literacy instruction and classroom management (including approaches that improve the schoolwide climate for learning, which may include positive behavioral interventions and supports);

(c) Provides regular and ongoing opportunities for mentors and mentees to observe each other's teaching methods in classroom settings during the day in a high-need school in the high-need LEA in the eligible partnership;

(d) Provides paid release time for mentors, as applicable;

(e) Provides mentoring to each mentee by a colleague who teaches in the same field, grade, or subject as the mentee;

(f) Promotes empirically-based practice of, and scientifically valid research on, where applicable—

(1) Teaching and learning;

(2) Assessment of student learning;

(3) The development of teaching skills through the use of instructional and behavioral interventions; and

(4) The improvement of the mentees' capacity to measurably advance student learning; and

(g) Includes—

(1) Common planning time or regularly scheduled collaboration for the mentor and mentee; and

(2) Joint professional development opportunities.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: 20 U.S.C. 1021–1022c.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $37,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$1,000,000.

Estimated Average Size of Awards: $750,000 for the first year of the project. Funding for the second, third, fourth, and fifth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Maximum Award: We will not make an award exceeding $1,500,000 to any applicant per 12-month budget period.

Estimated Number of Awards: 15–20.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An eligible applicant must be an ''eligible partnership'' as defined in section 200(6) of the HEA. The term ''eligible partnership'' means an entity that—

(1) Must include:

(i) A high-need LEA;

(ii) A high-need school or a consortium of high-need schools served by the high-need LEA; or

(B) As applicable, a high-need ECE program;

(iii) A partner institution;

(iv) A school, department, or program of education within such partner institution, which may include an existing teacher professional development program with proven outcomes within a four-year IHE that provides intensive and sustained collaboration between faculty and LEAs consistent with the requirements of title II of the HEA; and

(v) A school or department of arts and sciences within such partner institution; and

(2) May include any of the following—

(i) The Governor of the State.

(ii) The State educational agency.

(iii) The State board of education.

(iv) The State agency for higher education.

(v) A business.

(vi) A public or private nonprofit educational organization.

(vii) An educational service agency.

(viii) A teacher organization.

(ix) A high-performing LEA, or a consortium of such LEAs, that can serve as a resource to the partnership.

(x) A charter school.

(xi) A school or department within the partner institution that focuses on psychology and human development.

(xii) A school or department within the partner institution with comparable expertise in the disciplines of teaching, learning, and child and adolescent development.

(xiii) An entity operating a program that provides alternative routes to State certification of teachers.

Note: So that the Department can confirm the eligibility of the LEA(s) that an applicant proposes to serve, applicants must include information in their applications that demonstrates that each LEA to potentially be served by the project is a ''high-need LEA'' (as defined in this notice).

Note: An LEA includes a public charter school that operates as an LEA.

Note: As required by HEA section 203(a)(2), an eligible partnership may not receive more than one grant during a five-year period.

Applicants should review the application package for additional information on determining whether an LEA meets the definition of ''high-need LEA.''

More information on eligible partnerships can be found in the TQP FAQ document found on the program website at *http://innovation.ed.gov/what-we-do/teacher-quality/teacher-quality-partnership/.*

2. a. *Cost Sharing or Matching:*

Under section 203(c) of the HEA (20 U.S.C. 1022b(c)))), each grant recipient must provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or in-kind, to carry out the activities supported by the grant. Grantees must budget their matching contributions on an annual basis relative to each annual award of TQP program funds and must provide evidence of their matching contributions for at least the first year of the grant in their grant applications, including a letter from an authorizing official committing to the match. Consistent with 2 CFR 200.306(b), any matching funds must be an allowable use of funds consistent with the cost principles detailed in Subpart E of the Uniform Guidance, and not included as a contribution for any other Federal award.

Section 203(c) of the HEA authorizes the Secretary to waive this matching requirement for any fiscal year for an eligible partnership if the Secretary determines that applying the matching requirement to the eligible partnership would result in serious hardship or an inability to carry out authorized TQP program activities. The Secretary does not, as a general matter, anticipate waiving this requirement in the future. Furthermore, given the importance of matching funds to the long-term success of the project, eligible entities must identify appropriate matching funds in the proposed budget. Finally, the selection criteria includes factors such as ''the adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization'' and ''the relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project,'' which may include a consideration of demonstrated matching support.

b. *Supplement-Not-Supplant:* This program involves supplement, not supplant funding requirements. In accordance with section 202(k) of the HEA (20 U.S.C. 1022a(k)), funds made available under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities under this program.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:*

a. *Limitation on Administrative Expenses:*

Under HEA section 203(d) (20 U.S.C. 1022b(d)), an eligible partnership that receives a grant under this program may not use more than two percent of the funds provided to administer the grant.

b. *General Application Requirements:*

All applicants must meet the following general application requirements in order to be considered for funding. Except as specifically noted, the general application requirements are from HEA section 202(b) (20 U.S.C. 1022a(b)).

Each eligible partnership desiring a grant under this program must submit an application that contains—

(a) A needs assessment of the partners in the eligible partnership with respect to the preparation, ongoing training, professional development, and retention of general education and special education teachers, principals, and, as applicable, early childhood educators;

(b) A description of the extent to which the program to be carried out with grant funds, as described in the absolute priority in this notice, will

prepare prospective and new teachers with strong teaching skills;

(c) A description of how such a program will prepare prospective and new teachers to understand and use research and data to modify and improve classroom instruction;

(d) A description of—

(1) How the eligible partnership will coordinate strategies and activities assisted under the grant with other teacher preparation or professional development programs, including programs funded under the ESEA and the IDEA, and through the National Science Foundation; and

(2) How the activities of the partnership will be consistent with State, local, and other education reform activities that promote teacher quality and student academic achievement;

(e) An assessment that describes the resources available to the eligible partnership, including—

(1) The integration of funds from other related sources;

(2) The intended use of the grant funds; and

(3) The commitment of the resources of the partnership to the activities assisted under this program, including financial support, faculty participation, and time commitments, and to the continuation of the activities when the grant ends;

(f) A description of—

(1) How the eligible partnership will meet the purposes of the TQP program as specified in section 201 of the HEA;

(2) How the partnership will carry out the activities required under the absolute priority, as described in this notice, based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(3) If the partnership chooses to use funds under this section for a project or activities under section 202(f) of the HEA, how the partnership will carry out such project or required activities based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(4) The partnership's evaluation plan under section 204(a) of the HEA;

(5) How the partnership will align the teacher preparation program with the—

(i) State early learning standards for ECE programs, as appropriate, and with the relevant domains of early childhood development; and

(ii) Challenging State academic standards under section 1111(b)(1) of the ESEA, established by the State in which the partnership is located;

(6) How the partnership will prepare general education teachers to teach students with disabilities, including training related to participation as a member of individualized education program teams, as defined in section 614(d)(1)(B) of the IDEA;

(7) How the partnership will prepare general education and special education teachers to teach students who are limited English proficient;

(8) How faculty at the partner institution will work during the term of the grant, with teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, in the classrooms of high-need schools served by the high-need LEA in the partnership to—

(i) Provide high-quality professional development activities to strengthen the content knowledge and teaching skills of elementary school and secondary school teachers; and

(ii) Train other classroom teachers to implement literacy programs that incorporate the essential components of reading instruction;

(9) How the partnership will design, implement, or enhance a year-long and rigorous teaching preservice clinical program component;

(10) How the partnership will support in-service professional development strategies and activities; and

(11) How the partnership will collect, analyze, and use data on the retention of all teachers and early childhood educators in schools and ECE programs located in the geographic area served by the partnership to evaluate the effectiveness of the partnership's teacher and educator support system; and

(g) With respect to the induction program required as part of the activities carried out under the absolute priority—

(1) A demonstration that the schools and departments within the IHE that are part of the induction program will effectively prepare teachers, including providing content expertise and expertise in teaching, as appropriate;

(2) A demonstration of the eligible partnership's capability and commitment to, and the accessibility to and involvement of faculty in, the use of empirically based practice and scientifically valid research on teaching and learning;

(3) A description of how the teacher preparation program will design and implement an induction program to support, though not less than the first two years of teaching, all new teachers who are prepared by the teacher preparation program in the partnership and who teach in the high-need LEA in the partnership, and, to the extent practicable, all new teachers who teach in such high-need LEA, in the further development of the new teachers' teaching skills, including the use of mentors who are trained and compensated by such program for the mentors' work with new teachers; and

(4) A description of how faculty involved in the induction program will be able to substantially participate in an ECE program or elementary school or secondary school classroom setting, as applicable, including release time and receiving workload credit for such participation.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the TQP program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Note: Tuition is not an allowable use of funds under this program.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of its intent to submit an application for funding by sending an email to *tqpartnership@ed.gov* with *FY 19 TQP Intent to Apply* in the subject line, by May 3, 2019. Applicants that do not send a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the sub-factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Quality of the Project Design* (up to 40 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measureable.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(b) *Adequacy of Resources* (up to 20 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(c) *Quality of the Management Plan* (up to 20 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the Adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(d) *Quality of the Project Evaluation* (up to 20 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(ii) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant

plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license shall extend only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The goal of the TQP program is to increase student achievement in K–12 schools by developing teachers who meet applicable State certification, including any requirements for certification obtained through alternative routes to certification, and licensure requirements.

Under the Government Performance and Results Act of 1993 (GPRA), the following measures will be used by the Department to evaluate the overall effectiveness of the grantee's project, as well as the TQP program as a whole:

(a) *Performance Measure 1: Certification/Licensure.* The percentage of program graduates who have attained initial State certification/licensure by passing all necessary licensure/certification assessments within one year of program completion.

(b) *Performance Measure 2: STEM Graduation.* The percentage of math/science program graduates that attain initial certification/licensure by passing all necessary licensure/certification assessments within one year of program completion.

(c) *Performance Measure 3: One-Year Persistence.* The percentage of program participants who were enrolled in the postsecondary program in the previous grant reporting period, did not graduate, and persisted in the postsecondary program in the current grant reporting period.

(d) *Performance Measure 4: One-Year Employment Retention.* The percentage of program completers who were employed for the first time as teachers of record in the preceding year by the partner high-need LEA or ECE program and were retained for the current school year.

(e) *Performance Measure 5: Three-Year Employment Retention.* The percentage of program completers who were employed by the partner high-need LEA or ECE program for three consecutive years after initial employment.

(f) *Performance Measure 6: Student Learning.* The percentage of grantees that report improved aggregate learning outcomes of students taught by new teachers. These data can be calculated using student growth, a teacher evaluation measure, or both. (This measure is optional and not required as part of GPRA reporting.)

(g) *Efficiency Measure:* The Federal cost per program completer. (This data will not be available until the final year of the project period.)

Note: If funded, grantees will be asked to collect and report data on these measures in their project's annual performance reports (34 CFR 75.590). Applicants are also advised to consider these measures in conceptualizing the design, implementation, and evaluation of their proposed projects because of their importance in the application review process. Collection of data on these measures should be a part of the evaluation plan, along with measures of progress on goals and objectives that are specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

Applicants must also address the evaluation requirements in section 204(a) of the HEA (20 U.S.C. 1022c(a)). This section asks applicants to develop objectives and measures for increasing:

(1) Achievement for all prospective and new teachers, as measured by the eligible partnership;

(2) Teacher retention in the first three years of a teacher's career;

(3) Improvement in the pass rates and scaled scores for initial State certification or licensure of teachers; and

(4) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA participating in the eligible partnership;

(5) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who are members of underrepresented groups;

(6) The percentage of teachers who meet the applicable State certification and licensure requirements, including

any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach high-need academic subject areas (such as reading, mathematics, science, and foreign language, including less commonly taught languages and critical foreign languages);

(7) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need areas (including special education and language instruction educational programs for limited English proficient students);

(8) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need schools, disaggregated by the elementary school and secondary school levels;

(9) As applicable, the percentage of ECE program classes in the geographic area served by the eligible partnership taught by early childhood educators who are highly competent; and

(10) As applicable, the percentage of teachers trained—

(i) To integrate technology effectively into curricula and instruction, including technology consistent with the principles of universal design for learning; and

(ii) To use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of improving student academic achievement.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) 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 29, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–06493 Filed 4–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2221–039]

Empire District Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and water.

b. *Project No:* 2221–039.

c. *Date Filed:* February 28, 2019.

d. *Applicant:* Empire District Electric Company (licensee).

e. *Name of Project:* Ozark Beach Hydroelectric Project.

f. *Location:* The project is located on the White River in Taney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Randy Richardson, Plant Manager, Empire District Electric Company, 3292 State Hwy Y, Forsyth, MO 65653; phone 417–625–6138, *rrichardson@empiredistrict.com.*

i. *FERC Contact:* Robert Ballantine at 202–502–6289, or *robert.ballantine@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 29, 2019.

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–2221–039. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests, on behalf of the City of Branson, Missouri, that the Commission approve a non-hydroelectric project use of reservoir water to reflect the in-place, water withdrawal operation of the City's two drinking water treatment plants (Cliff Drive and Meadows). The project

license caps the licensee's ability to grant approval of water withdrawal requests, from the project reservoir, to no more than one million gallons per day (MGD). Water withdrawals greater that 1 MGD must be approved by the Commission. The plants currently withdrawal on average, 3.74 MGD and future expansion would raise the withdrawal to 11.2 MGD.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS; PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests, must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06457 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–913–000.
Applicants: Spire Storage West LLC.
Description: Compliance filing Spire Storage West LLC—Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5038.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–914–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Mar2019 NegRate Cleanup for Name Changes to be effective 4/26/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5046.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–915–000.
Applicants: SG Resources Mississippi, L.L.C.
Description: Compliance filing SG Resources Mississippi, L.L.C.—Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5049.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–916–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Columbia 860005 releases eff 4–1–19 to be effective 4/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5072.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–917–000.
Applicants: Pine Prairie Energy Center, LLC.
Description: Compliance filing Pine Prairie Energy Center, LLC—Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5078.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–918–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SRP 2019) to be effective 4/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5079.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–919–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: Compliance filing NAESB Version 3.1 Compliance to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5113.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–920–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: Compliance filing NAESB Version 3.1 Compliance to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5120.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–921–000.
Applicants: Saavi Energy Solutions, LLC, Tucson Electric Power Company, Southwest Gas Corporation.
Description: JJoint Petition for Limited Waiver of Capacity Release Regulations and Policies, et al. of Saavi Energy Solutions, LLC, et al. under RP19–921.
Filed Date: 3/27/19.
Accession Number: 20190327–5129.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–922–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance filing NAESB Version 3.1 Compliance to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5223.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–923–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Compliance filing NAESB Version 3.1 Compliance to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5224.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: RP19–924–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing (BP Energy) on 3–27–19 to be effective 4/1/2019.

Filed Date: 3/27/19.
Accession Number: 20190327–5225.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–925–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Chevron to Eco-Energy 8956845 to be effective 4/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5180.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–926–000.
Applicants: Rendezvous Pipeline Company, LLC.
Description: Compliance filing NAESB Compliance Filing—Order No. 587–Y to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5178.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–927–000.
Applicants: Bison Pipeline LLC.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5213.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–928–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5215.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–929–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5217.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–930–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5218.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–931–000.
Applicants: Ruby Pipeline, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5219.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–932–000.
Applicants: Northern Border Pipeline Company.
Description: Compliance filing Compliance to Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5220.
Comments Due: 5 p.m. ET 4/8/19.
Docket Numbers: RP19–933–000.
Applicants: Mojave Pipeline Company, L.L.C.
Description: Compliance filing Order No. 587–Y Compliance Filing to be effective 8/1/2019.
Filed Date: 3/27/19.
Accession Number: 20190327–5221.
Comments Due: 5 p.m. ET 4/8/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06456 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL19–3–000]

Inquiry Regarding the Commission's Electric Transmission Incentives Policy

Correction

In notice document 2019–05895 beginning on page 11759 in the issue of Thursday, March 28, 2019, make the following correction:

On page 11759, in the second column the **DATES** paragraph should read as follows:

DATES: Initial Comments are due June 26, 2019, and Reply Comments are due July 26, 2019.

[FR Doc. C1–2019–05895 Filed 4–2–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–51–000]

Columbia Gas Transmission, LLC; Notice of Schedule for Environmental Review of the VNG Suffolk No. 3 Meter Station Expansion Project

On January 17, 2019, Columbia Gas Transmission, LLC (Columbia) filed an application in Docket No. CP19–51–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas facilities. The proposed project is known as the VNG Suffolk No. 3 Meter Station Expansion Project (Project) in Suffolk, Virginia, which would increase the current maximum daily delivery obligations of natural gas from 3.73 million cubic feet to 12 million cubic feet per day between various delivery points on Columbia's system in southeastern Virginia.

On January 31, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA May 17, 2019
90-day Federal Authorization Decision Deadline August 15, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Columbia proposes to install new meter station facilities to replace its existing facilities at the VNG Suffolk No. 3 Meter Station (MS–831056). Columbia would design the proposed facilities for a maximum allowable operating pressure of 600 pounds per square inch gauge, which is consistent with the supply pressure of Columbia's existing VM–107 and VM–108 pipeline system. Upon completion of the new meter station facilities, Columbia would abandon the existing meter station.

Background

On February 28, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the VNG Suffolk No. 3 Meter Station Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries. In response to the NOI, the Commission received comments from the Virginia Department of Environmental Quality (DEQ) and the United States Environmental Protection Agency (EPA). The Virginia DEQ letter provided a summary of the agency's role in National Environmental Policy Act project scoping and agency involvement, document submission instructions, and information on database assistance. The EPA letter outlined issues and impacts to be addressed in the EA. All substantive comments will be addressed in the EA; however, the Commission has received no additional comments to date.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional Information About the Project is Available From the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP19–51), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06459 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1953–088; 2110–034; 2192–046; 2256–075; 2590–065; 2207–048; 2212–052; 2255–120; 2291–180; 2292–141]

Consolidated Water Power Company; Ahlstrom-Munksjö Specialty Solutions Acquisition LLC; Domtar Paper Company, LLC; Domtar Wisconsin Corporation; Notice of Applications Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Proceeding:* Extension of License Terms (Central Basin).

b. *Project Nos.:* P–1953–088, P–2110–034, P–2192–046, P–2256–075, P–2590–065, P–2207–048, P–2212–052, P–2255–120, P–2291–180, and P–2292–141.

c. *Dates Filed:* February 4, 2019, February 11, 2019, and February 22, 2019.

d. *Licensees:* Consolidated Water Power Company, Ahlstrom-Munksjö Specialty Solutions Acquisition LLC, Domtar Paper Company, LLC, and Domtar Wisconsin Corporation.

e. *Names and Locations of the Projects:* DuBay (P–1953–088), Stevens Point (P–2110–034), Biron (P–2192–046), Wisconsin Rapids (P–2256–075), Whiting (P–2590–065), Mosinee (P–2207–048), Rothschild (P–2212–052), Centralia (P–2255–120), Port Edwards (P–2291–180), and Nekoosa (P–2292–141) hydroelectric projects, all located on the Wisconsin River, in Wood, Marathon, and Portage counties, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensees Contact Information:* (P–1953–088, P–2110–034, P–2192–046, P–2256–075 & P–2290–065) Mr. Thomas Scharff, President, Consolidated Water Power Company, 610 High Street, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422–3073, *Thomas,scharff@versoco.com;* (P–2207–048) Ms. Jennifer Peplinski, Senior Environmental Health and Safety Manager, Ahlstrom-Munksjö Specialty Solutions Acquisition LLC, 100 Main Street Mosinee, WI 54455, (715) 692–3364, *Jennifer.Peplinski@Ahlstrom-Munksjo.com;* (P–2212–052) Mr. Steven Lewens, Environmental Health & Safety Manager-Rothschild, Domtar Paper Company, LLC, 200 North Grand Avenue, Rothschild, WI 54474, (715) 355–6268, *Steven.lewens@domtar.com;* (P–2255–120, P–2291–180 & P–2292–141) Mr. David S. Ulrich, Environmental Manager, Domtar Wisconsin Dam Corporation, Nekoosa Mill, 301 Point Basse Avenue, Nekoosa, WI 54457, (715) 886–7711, *david.ulrich@domtar.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number, for example, ''P–1953–088''.

Note that you can file comments, motions to intervene, and protects in response to all of the projects identified in the notice together (*i.e.,* one response for all projects) or you can respond to each project individually, or do a combination of both.

j. *Description of Proceeding:* Ahlstrom-Munksjö Specialty Solutions Acquisition LLC and Domtar Paper Company, LLC, on February 4, 2019, Consolidated Water Power Company, on February 11, 2019, and Domtar Wisconsin Corporation, on February 22, 2019, filed requests to extend the license terms for their ten respective projects located in the central sub-basin of the Wisconsin River. The projects include: (1) The DuBay (P–1953), Stevens Point (P–2110), Biron (P–2192), Wisconsin Rapids (P–2256), and Whiting (P–2590) projects licensed to the Consolidated Water Power Company; (2) the Mosinee Project No. 2207 licensed to Ahlstrom-Munksjö Specialty Solutions Acquisition LLC; (3) the Rothschild Project No. 2212 licensed to Domtar Paper Company, LLC; and (4) the Centralia (P–2292), Port Edwards (P–2291), and Nekoosa (P–2255) projects licensed to Domtar Wisconsin Corporation.

Currently, the 30-year licenses for the DuBay, Wisconsin Rapids, Whiting,

Mosinee, Rothschild, Centralia, Port Edwards, and Nekoosa Projects expire on June 30, 2026, the 30-year licenses for the Biron and Stevens Point Projects expire on June 30, 2033, and the 30-year license for the Mosinee Project expires on March 31, 2035. The licensees seek Commission approval to extend the license terms for the above ten projects so they all expire on June 30, 2038. The licensees say the extensions would assist with the comprehensive study and analysis of the projects' cumulative environmental impact and would reduce stakeholder burden by integrating the relicensing consultation process. Additionally, the licensees say that aligning the license expiration dates would eliminate redundancies during relicensing for all involved parties as the projects in the central sub-basin have similar vegetation, land cover, hydrology, and resource management concerns.

The licensees' requests are part of a broader proposal to align the license expiration dates for 20 projects on the Wisconsin River into three groupings based on each project's location to facilitate comprehensive study and analysis and coordinate relicensing as discussed above. This public notice covers ten projects in the central sub-basin of the Wisconsin River. The Commission is issuing two other public notices—one for eight projects in the northern sub-basin of the Wisconsin River that would align these expiration dates so they expire on June 30, 2033 and another public notice for two projects in the southern sub-basin of the Wisconsin River that would align the license expiration dates to expire on June 30, 2041.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (for example, P–1953–088) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the requests to extend the license terms. Agencies may obtain copies of the applications directly from the applicants. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 28, 2019..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06466 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1957–58; 1979–064; 1999–074; 2476–034; 2113–257; 2161–038; 2180–044; 2239–044]

Wisconsin Public Service Corporation; Wisconsin Valley Improvement Company; Specialty Papers Acquisition, LLC; PCA Hydro, Inc.; Tomahawk Pulp and Power Company; Notice of Applications Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Proceeding:* Extension of License Terms (Northern Basin).

b. *Project Nos.:* P–1957–058, P–1979–064, P–1999–074, P–2476–034, P–2113–257, P–2161–038, P–2180–044, and P–2239–044.

c. *Date Filed:* January 31, 2019.

d. *Licensees:* Wisconsin Public Service Corporation, Wisconsin Valley Improvement Company, Specialty Papers Acquisition, LLC, PCA Hydro, Inc., and Tomahawk Pulp and Power Company.

e. *Names and Locations of the Projects:* Otter Rapids (P–1957–058), Alexander (P–1979–064), Wausau (P–1999–074), Jersey (P–2476–034), Rhinelander (P–2161–038), Grandmother Falls (P–2180–044), and Kings Dam (P–2239–044) hydroelectric projects and the Wisconsin River Headwaters Project (P–2113–257), all located on the Wisconsin River, in Lincoln, Marathon, Oneida, and Vilas counties, Wisconsin and Gogebic County, Michigan.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensees Contact Information:* (P–1957–058, P–1979–064, P–1999–074 & P–2476–034) Mr. Jamie Nuthals, Principal Environmental Consultant, WEC Business Services LLC, 700 North Adams Street, Green Bay, WI 54301, (920) 433–1460, *james.nuthals@wecenergygroup.com;* (P–2113–257) Mr. Ben E. Niffenegger, Manager of Environmental Affairs, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, WI 54403, (715) 848–2976, Ext. 304, *ben@wvic.com;* (P–2180–044) Ms. Kristy Neumann, Environmental Manager, Packaging Corporation of America, N9090 County Road E, Tomahawk, WI 54487, (715) 453–2131 Ext. 238, *Kneumann@packagingcorp.com;* (P–2161–038) Mr. Kevin Dean, 515 West

Davenport Street, Rhinelander, WI 54501, (715) 369–4231, *kevin.dean@ahlstrom-munksjo.com;* (P–2239–044) Mr. Alfred Morganroth, Chief Executive Officer, Tomahawk Power and Pulp Company, N10099 Kings Road, Tomahawk, WI 54487, (310) 490–4101, *lnmangus@frontier.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number, for example, ''P–1957–058''.

Note that you can file comments, motions to intervene, and protects in response to all of the projects identified in the notice together (*i.e.,* one response for all projects) or you can respond to each project individually, or do a combination of both.

j. *Description of Proceeding:* On January 31, 2019, Wisconsin Public Service Corporation, Wisconsin Valley Improvement Company, Specialty Papers Acquisitions, LLC, PCA Hydro, Inc., and the Tomahawk Pulp and Power Company filed requests to extend the license terms for their eight respective projects located in the northern sub-basin of the Wisconsin River. The projects include: (1) The Otter Rapids (P–1957), Alexander (P–1979), Wausau (P–1999), and Jersey (P–2476) projects licensed to the Wisconsin Public Service Corporation; (2) the Wisconsin River Headwaters Project No. 2113 licensed to the Wisconsin Valley Improvement Company; (3) the Rhinelander Project No. 2161 licensed to Specialty Papers Acquisitions, LLC; (4) the Grandmother Falls Project No. 2180 licensed to PCA Hydro, Inc.; and (5) the Kings Dam Project No. 2239 licensed to the Tomahawk Pulp and Power Company.

Currently, the 30-year licenses for the Alexander, Rhinelander, and Grandmother Falls Projects expire, respectively, on February 28, 2025, July 31, 2033, and December 31, 2034. The 30-year licenses for the Wisconsin River Headwaters, Kings Dam, Wausau, and Jersey Projects expire on June 30, 2026. The 40-year license for the Otter Rapids Project expires on June 30, 2030. The licensees seek Commission approval to extend the license terms for the above eight projects so they all expire on June 30, 2035. The licensees say the extensions would assist with the comprehensive study and analysis of the projects' cumulative environmental impact and would reduce stakeholder burden by integrating the relicensing consultation process. Additionally, the licensees say that aligning the license expiration dates would eliminate redundancies during relicensing for all involved parties as the projects in the northern sub-basin have similar vegetation, land cover, hydrology, and resource management concerns.

The licensees' requests are part of a broader proposal to align the license expiration dates for 20 projects on the Wisconsin River into three groupings based on each project's location to facilitate comprehensive study and analysis and coordinate relicensing as discussed above. This public notice covers eight projects in the northern sub-basin of the Wisconsin River. The Commission is issuing two other public notices—one for 10 projects in the central sub-basin of the Wisconsin River that would align these expiration dates so they expire on June 30, 2038 and another public notice for two projects in the southern sub-basin of the Wisconsin River that would align the license expiration dates to expire on June 30, 2041.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (for example, P–1957–058) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the requests to extend the license terms. Agencies may obtain copies of the applications directly from the applicants. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06460 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1984–223; 11162–131]

Wisconsin River Power Company; Wisconsin Power & Light Company; Notice of Applications Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Proceeding:* Extension of License Terms (Southern Basin).

b. *Project Nos.:* P–1984–223 and P–11162–131.

c. *Date Filed:* March 1, 2019.

d. *Licensees:* Wisconsin River Power Company and Wisconsin Power and Light Company.

e. *Names and Locations of the Projects:* Petenwell and Castle Rock (P–1984–223) and Prairie du Sac (P–11162–131) hydroelectric projects, located on the Wisconsin River, in Adams, Columbia, Juneau, Sauk, and Wood counties, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensees Contact Information:* (P–1984–223) Mr. Jamie Nuthals, Principal Environmental Consultant, WEC Business Services LLC, 700 North Adams Street, Green Bay, WI 54301, (920) 433–1460, *james.nuthals@wecenergygroup.com*; (P–11162–131) Mr. Brad Kulka, Director of Operations, Central Region, Wisconsin Power and Light Company, 4902 North Biltmore Lane, Madison, WI 53718, (608) 458–3849, *BradKulka@alliantenergy.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number, for example, ''P–1984–223''.

Note that you can file comments, motions to intervene, and protects in response to both of the projects identified in the notice together (*i.e.,* one response for both projects) or you can respond to each project individually.

j. *Description of Proceeding:* On March 1, 2019, the Wisconsin River Power Company, licensee for the Petenwell and Castle Rock Project No. 1984, and the Wisconsin Power & Light Company, licensee for the Prairie du Sac Project No. 11162, filed requests to extend the license terms for their respective projects located in the southern sub-basin of the Wisconsin River.

Currently, the 30-year license for the Petenwell and Castle Rock Project expires on November 30, 2031 and the 30-year license for the Prairie du Sac Project expires on May 31, 2032. The licensees seek Commission approval to extend the license terms for the two projects so they expire on June 30, 2041. The licensees say the extensions would assist with the comprehensive study and analysis of the projects' cumulative environmental impact and would reduce stakeholder burden by integrating the relicensing consultation process. Additionally, the licensees say that aligning the license expiration dates would eliminate redundancies during relicensing for all involved parties as both projects in the southern sub-basin have similar vegetation, land cover, hydrology, and resource management concerns.

The licensees' requests are part of a broader proposal to align the license expiration dates for 20 projects on the Wisconsin River into three groupings based on each project's location to facilitate comprehensive study and analysis and coordinate relicensing as discussed above. This public notice covers the two projects in the southern sub-basin of the Wisconsin River. The Commission is issuing two other public notices—one for eight projects in the northern sub-basin of the Wisconsin River that would align these expiration dates so they expire on June 30, 2035 and another public notice for 10 projects in the central sub-basin of the Wisconsin River that would align the license expiration dates to expire on June 30, 2038.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (for example, P–1984–223) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the requests to extend the license terms. Agencies may obtain copies of the applications directly from the applicants. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to these applications must be accompanied by

proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06463 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–251]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2146–251.

c. *Date Filed:* March 5, 2019.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Coosa, Chilton, Talladega and Shelby counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* James F. Crew, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–4265.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: April 27, 2019.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2146–251.

k. *Description of Request:* Alabama Power requests approval to modify Unit 5 at the Lay Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 5 includes complete turbine replacement, wicket gate replacement, wicket gate stem bushings installation, turbine, and generator bearing upgrades, and related component replacement. Alabama Power states the turbine replacement is not expected to result in an increase to the total rated capacity or the maximum discharge of the unit at rated conditions. Alabama Power notes that project operations will not change, and refurbishment will not include any structural changes to the project facilities.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–2146) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06464 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–115–000]

Young Storage Gas Company, Ltd.; Notice of Application

Take notice that on March 26, 2019, Young Storage Gas Company, Ltd. (Young), PO Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP19–115–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking authorization to increase the total certificated gas storage inventory at its existing storage field located in Morgan County, Colorado, by an additional 1 Bcf from the existing 9.95 Bcf up to 10.95 Bcf. Young seeks to inject 800 MMcf of additional base gas inventory into its storage field in order to enhance the deliverability characteristics of the storage field, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at

FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Francisco Tarin, Director, Regulatory, Young Gas Storage Company, Ltd.; PO Box 1087, Colorado Springs, Colorado 80944 at (719) 667–7517 or by fax at (719) 520–4697.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on April 12, 2019.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06461 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–10–000.

Applicants: Clean Energy Future—Lordstown, LLC, Perennial Lordstown, LLC.

Description: Supplemental Notice of Consummation and Informational Filing Regarding Additional Investor, et al. of Clean Energy Future—Lordstown, LLC, et al.

Filed Date: 3/26/19.

Accession Number: 20190326–5289.

Comments Due: 5 p.m. ET 4/16/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–829–003.

Applicants: Wisconsin Electric Power Company.

Description: Compliance filing: Reactive Supply Service Settlement Compliance Filing to be effective 5/1/2018.

Filed Date: 3/27/19.

Accession Number: 20190327–5193.

Comments Due: 5 p.m. ET 4/17/19.

Docket Numbers: ER19–745–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing pursuant to March 1, 2019 Order re: ODEC and NAEA Rock Springs to be effective 1/1/2019.

Filed Date: 3/27/19.

Accession Number: 20190327–5183.

Comments Due: 5 p.m. ET 4/17/19.

Docket Numbers: ER19–1454–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Letter Agreement Wildcat I Energy Storage, LLC to be effective 3/20/2019.

Filed Date: 3/27/19.

Accession Number: 20190327–5179.

Comments Due: 5 p.m. ET 4/17/19.

Docket Numbers: ER19–1455–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: TCJA Implementation Filing to be effective 1/1/2018.

Filed Date: 3/27/19.

Accession Number: 20190327–5222.

Comments Due: 5 p.m. ET 4/17/19.

Docket Numbers: ER19–1456–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–03–28_SA 3293 Big Stone Sub Transformer Upgrade MPFCA (J488 J493 J526) to be effective 3/29/2019.

Filed Date: 3/28/19.

Accession Number: 20190328–5074.

Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1457–000.

Applicants: Buckeye Power, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised SA No. 4753—NITSA among PJM and Buckeye Power, Inc. to be effective 3/1/2019.

Filed Date: 3/28/19.

Accession Number: 20190328–5086.

Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1458–000.

Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: MRA 28 Filing to be effective 1/1/2019.

Filed Date: 3/28/19.
Accession Number: 20190328–5091.
Comments Due: 5 p.m. ET 4/18/19.
Docket Numbers: ER19–1459–000.
Applicants: Wisconsin Public Service Corporation.
Description: § 205(d) Rate Filing: Filing of Annual Formula Rate for PEB and PBOP Changes to be effective 4/1/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5094.
Comments Due: 5 p.m. ET 4/18/19.
Docket Numbers: ER19–1460–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1313R11 Oklahoma Gas and Electric Company NITSA and NOA to be effective 3/1/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5184.
Comments Due: 5 p.m. ET 4/18/19.
Docket Numbers: ER19–1461–000.
Applicants: Greenlight Energy Inc.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 4/1/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5185.
Comments Due: 5 p.m. ET 4/18/19.
Docket Numbers: ER19–1463–000.
Applicants: Upper Michigan Energy Resources Corporation.
Description: § 205(d) Rate Filing: Filing of Amendment to Agreement for Wholesale Distribution Service to be effective 4/1/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5229.
Comments Due: 5 p.m. ET 4/18/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06462 Filed 4–2–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2019–0158; FRL–9991–64–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Renewal for EPA's WasteWise Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR) for EPA's WasteWise Program (EPA ICR No. 1698.10, OMB Control No. 2050–0139) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. An Agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 2, 2019.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2019–0158, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kent Foerster, Office of Resource Conservation and Recovery (mail code 5306P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–0199; fax number: 703–308–8686; email address: *foerster.kent@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This is a renewal for reporting and recording keeping requirements under EPA's WasteWise program. WasteWise is a voluntary partnership with organizations to prevent and recycle multiple materials from municipal solid wastes (*e.g.,* paper, aluminum cans; plastic and glass bottles; food wastes: etc.). Under this program, participants agree to set waste reduction goals and take specified actions to reduce multiple waste streams. In addition, under WasteWise, EPA has issued specific material or sector-based challenges. Currently these challenges focus on food recovery, electronics, and State related waste and material management efforts. A separate Federal Green Challenge targets the federal sector but is not part of this ICR. Participants use a web-based online database system containing integrated platforms with automated forms to register for participation; set goals; and report their waste reduction achievements on an annual basis.

Form numbers: None.

Respondents/affected entities: Business and other for-profit and not-

for-profit organizations, as well as Federal/State/Local and Tribal governments.

Respondent's obligation to respond: Voluntary (RCRA sections 1003 and 4001).

Estimated number of respondents: During year 1 of this ICR it is estimated that 2,119 respondents will enter data into the data management system. This estimate is expected to grow to 2,329 respondents in year 3 of this ICR due to an increased enrollment by participants.

Frequency of response: Annual.

Total estimated burden: During year 1 of this ICR it is estimated that 147,348 hours respondents, 3,452 hours from EPA. By year 3, the estimated respondent hours of 164,073 and 4,152 agency hours for a total of 168,225 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: For year 1, $5,766,636.45 from extra-agency participants and $436,427.30 from EPA, which includes $6,213,063.75 annualized labor costs and $0 annualized capital or O&M costs. For year 3, $5,552,371.20 for respondents and $471,827.30 in agency costs, with annualized cost of $6,024,198.50.

Changes in estimates: Annual burden hours and associated costs shown in the ICR reflect changing participation rates throughout the ICR time period, therefore any changes are documented in Supplemental Statement.

Dated: March 27, 2019.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2019–06482 Filed 4–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9991–58–OW]

Environmental Financial Advisory Board (EFAB); Request for Nominations of Expert Consultants on Stormwater Funding and Financing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice. Request for nominations of expert consultants to the Environmental Financial Advisory Board (EFAB) on stormwater funding and financing.

SUMMARY: The United States Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for expert consultants to the Environmental Financial Advisory Board (EFAB). The expert consultants will advise the EFAB workgroup focused on stormwater funding and financing responsive to the America's Water Infrastructure Act of 2018, Section 4101 (STORMWATER INFRASTRUCTURE FUNDING TASK FORCE). Expert consultants will provide knowledge, information, and contribute to the EFAB Stormwater Finance Workgroup's recommendations to the EPA in the following areas: Identify how funding for stormwater infrastructure from such sources has been made available, and utilized, in each state to address stormwater infrastructure needs; Identify how the source of funding affects the affordability of the infrastructure, including consideration of the costs associated with financing the infrastructure; and Evaluate whether such sources of funding are sufficient to support capital expenditures and long-term operation and maintenance costs. Additional, related, areas may be identified in the first meeting. Experts will serve through the end of April 2020.

The deadline for receiving nominations is Friday, April 19, 2019. Appointments will be made by EFAB's Designated Federal Officer and will be announced in early May 2019. A meeting is expected to be held in Washington, DC, on June 6, 2019.

DATES: Nominations should be electronically submitted to *waterfinancecenter@epa.gov* with the subject line ''EFAB Stormwater Finance Workgroup—Expert Consultant Nomination'' no later than 11:59 p.m. local time on Friday, April 19, 2019.

FOR FURTHER INFORMATION CONTACT: Contact Ellen Tarquinio (*tarquinio.ellen@epa.gov*) with questions about the workgroup.

SUPPLEMENTARY INFORMATION:

Evaluation Criteria: The Administrator of the EPA will appoint up to 20 external expert consultants to advise the members of the EFAB that comprise the stormwater finance workgroup.

EPA values and welcomes diversity. In an effort to obtain a diverse pool of candidates, EPA encourages nominations of women and men of all racial and ethnic groups. The following criteria will be used to evaluate nominees: Representation from Federal agencies, state government, local government, private sector, and non-profit organizations; demonstrated expertise in stormwater funding and/or financing, stormwater technical experience, stormwater stakeholder engagement, or water infrastructure funding and management; geographic diversity; and varying community characteristics experience.

Nominations for membership must include a resume describing the professional and/or educational qualifications of the nominee as well as expertise/experience. Contact details should include full name, affiliation title, business mailing address, telephone, and email address. A supporting letter of endorsement is encouraged but not required.

Environmental Financial Advisory Board (EFAB): The Environmental Financial Advisory Board (EFAB) was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues: Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations; developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches; identifying approaches specifically targeted to small/disadvantaged community financing; increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws; analyzing how new technologies can be brought to market expeditiously; increasing the total investment in environmental protection of public and private environmental resources to help ease the environmental financing challenge facing our nation.

The EFAB typically meets two times each calendar year (up to two days per meeting) at different locations within the continental United States. EFAB Workgroups focusing on specific environmental finance topics typically meet over conference calls in between the in-person meetings to discuss recommendations and other work products. These recommendations and/or work products are voted on by the full EFAB before they are provided to the EPA.

Expert consultants for the Stormwater Finance Workgroup are expected to attend the in-person meetings and participate on workgroup conference calls that will occur up to twice a month through November 2019. Expert consultants will receive no salary or other compensation for participation in workgroup activities. Reimbursement for travel and per diem is subject to funding availability.

Expert consultants are expected to assist in the development of workgroup discussions, reports, and recommendations on stormwater

funding and financing resulting in a final recommendation report submitted to the EPA by Friday, December 6, 2019. Expert consultants are expected to fully participate, coordinate, and contribute to EFAB workgroup products, but are not able to vote, on EFAB's final recommendations. The EFAB workgroup will focus specifically on a report to EPA that is responsive to the America's Water Infrastructure Act of 2018, Section 4101.

Dated: March 21, 2019.

Andrew Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2019–06483 Filed 4–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9991–59–OLEM]

FY 2019 Supplemental Funding for Brownfields Revolving Loan Fund (RLF) Grantees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability of funds.

SUMMARY: The Environmental Protection Agency (EPA) plans to make available approximately $8 million to provide supplemental funds to Revolving Loan Fund (RLF) cooperative agreements previously awarded competitively under section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA will consider awarding supplemental funding only to RLF grantees who have demonstrated an ability to deliver programmatic results by making at least one loan or subgrant. The award of these funds is based on the criteria described at CERCLA 104(k)(5)(A)(ii).

The Agency is now accepting requests for supplemental funding from RLF grantees. Requests for funding must be submitted to the appropriate EPA Regional Brownfields Coordinator (listed below) by May 6, 2019. Funding requests for hazardous substances and/or petroleum funding will be accepted. Specific information on submitting a request for RLF supplemental funding is described below and additional information may be obtained by contacting the EPA Regional Brownfields Coordinator.

DATES: This action is applicable April 3, 2019.

ADDRESSES: A request for supplemental funding must be in the form of a letter addressed to the appropriate Regional Brownfields Coordinator (see listing below) with a copy to Rachel Congdon, *congdon.rachel@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Congdon, U.S. EPA, (202) 566–1564 or the appropriate Brownfields Regional Coordinator.

SUPPLEMENTARY INFORMATION:

Background

The Small Business Liability Relief and Brownfields Revitalization Act added section 104(k) to CERCLA to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup and job training. Section 104(k) includes a provision for EPA to, among other things, award grants to eligible entities to capitalize Revolving Loan Funds and to provide loans and subgrants for brownfields cleanup. Section 104(k)(5)(A)(ii) authorizes EPA to make additional grant funds available to RLF grantees for any year after the year for which the initial grant is made (noncompetitive RLF supplemental funding) taking into consideration:

(I) The number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the [Agency] considers appropriate to carry out this subsection.

Eligibility

In order to be considered for supplemental funding, grantees must demonstrate that they have significantly depleted funds (both EPA grant funding and any available program income) and that they have a clear plan for utilizing requested additional funds in a timely manner. Grantees must demonstrate that they have made at least one loan or subgrant prior to applying for this supplemental funding and have significantly depleted existing available funds. For FY2019, EPA defines ''significantly depleted funds'' as uncommitted, available funding is 25% or less of total RLF funds awarded under all open and closed grants and cannot exceed $600,000. For new RLF recipients with an award of $1 million or less, funds will be consider significantly depleted if the uncommitted or available funding does not exceed $300,000. Additionally, the RLF recipient must have demonstrated a need for supplemental funding based on, among other factors, the list of potential projects in the RLF program pipeline; demonstrated the ability to make loans and subgrants for cleanups that can be started, completed, and will lead to redevelopment; demonstrated the ability to administer and revolve the RLF by generating program income; demonstrated an ability to use the RLF grant to address funding gaps for cleanup; and demonstrated that they have provided a community benefit from past and potential loan(s) and/or subgrant(s). EPA encourages innovative approaches to maximize revolving and leveraging with other funds, including use of grants funds as a loan loss guarantee, combining with other government or private sector lending resources. Applicants for supplemental funding must contact the appropriate Regional Brownfields Coordinator below to obtain information on the format for supplemental funding applications for their region. When requesting supplemental funding, applicants must specify whether they are seeking funding for sites contaminated by hazardous substances and/or petroleum. Applicants may request both types of funding.

REGIONAL CONTACTS

Region	States	Address/phone No.
EPA Region 1, Joe Ferrari, *Ferrari.Joe@epa.gov*.	CT, ME, MA, NH, RI, VT	5 Post Office Square, Boston, MA 02109–3912, Phone (617) 918–1105.
EPA Region 2, Lya Theodoratos, *Theodoratos.Lya@epa.gov*.	NJ, NY, PR, VI	290 Broadway, 18th Floor, New York, NY 10007, Phone (212) 637–3260.
EPA Region 3, Brett Gilmartin, *Gilmartin.Brett@epa.gov*.	DE, DC, MD, PA, VA, WV	1650 Arch Street, Mail Code 3HS51, Philadelphia, Pennsylvania 19103–2029, Phone (215) 814–3405.

REGIONAL CONTACTS—Continued

Region	States	Address/phone No.
EPA Region 4, Derek Street, *Street.Derek@epa.gov*.	AL, FL, GA, KY, MS, NC, SC, TN.	Atlanta Federal Center, 61 Forsyth Street SW, 10TH FL , Atlanta, GA 30303–8960, Phone (404) 562–8574.
EPA Region 5, Keary Cragan, *Cragan.Keary@epa.gov*.	IL, IN, MI, MN, OH, WI	77 West Jackson Boulevard, Mail Code SB–5J, Chicago, Illinois 60604–3507, Phone (312) 353–5669.
EPA Region 6, Camisha Scott, *Scott.Camisha@epa.gov*.	AR, LA, NM, OK, TX	1445 Ross Avenue, Suite 1200 (6SF–PB), Dallas, Texas 75202–2733, Phone (214) 665–6755.
EPA Region 7, Susan Klein, *R7_Brownfields@epa.gov*.	IA, KS, MO, NE	11201 Renner Blvd, Lenexa, Kansas 66219, Phone (913) 551–7786.
EPA Region 8, Ted Lanzano, *Lanzano.Ted@epa.gov*.	CO, MT, ND, SD, UT, WY	1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–6596.
EPA Region 9, Noemi Emeric-Ford, *Emeric-Ford.Noemi@epa.gov*.	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, WST–8, San Francisco, CA 94105, Phone (213) 244–1821.
EPA Region 10, Susan Morales, *Morales.Susan@epa.gov*.	AK, ID, OR, WA	1200 Sixth Avenue, Suite 900, Mailstop: ECL–112 Seattle, WA 98101, Phone (206) 553–7299.

Dated: March 25, 2019.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management.

[FR Doc. 2019–06484 Filed 4–2–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0751]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 3, 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 Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0751.

Title: Contracts and Concessions, 47 CFR 43.51.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 20 respondents, 20 responses.

Estimated Time per Response: 6–8 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 211, 219 and 220.

Total Annual Burden: 140 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a revision of the information collection, titled, ''Contracts and Concessions—47 CFR 43.51'' under OMB Control Number 3060–0751. On November 29, 2012, the Commission released the International Settlements Policy Reform Order (''ISP Reform Order''), FCC 12–145. In this Order, the Commission decided to eliminate the international settlements policy and certain associated rules, including removal of the Section 43.51(d) filing requirements and removal of Section 43.51(b)(3). As a result, this Supporting Statement reflects a program change of −20 responses and −160 in annual burden hours.

The Commission determined in the *ISP Reform Order* that the international settlements policy (ISP) and rules had become unnecessarily burdensome on U.S. carriers attempting to negotiate agreements with foreign carriers to exchange traffic at lower rates. The Commission determined that eliminating the ISP, with one exception related to Cuba, would enable more market-based arrangements between U.S. and foreign carriers on all U.S.-international routes, giving all U.S. consumers competitive pricing when they make international calls. When it eliminated the ISP, the Commission eliminated Section 43.51(b)(3), which required that the agreements described in Sections 43.51(a) and 43.51(b) be filed by U.S.-international carriers that were affiliated with foreign carriers that possessed market power on certain U.S.-international. The Commission also removed Section 43.51(d), which required annual reporting by U.S.-international carriers of certain

information concerning their agreements for interconnection of an international private line to the U.S. public switched network. The Commission declined in the *ISP Reform Order* to adopt proposed rules requiring U.S.-international carriers to file, or provide notice of, agreements with foreign carriers to exchange traffic at rates that exceeded the Commission's ''benchmark'' settlement rates. The Commission stated that it would require U.S. carriers to provide information about any above-benchmark settlement rates on an as-needed basis in connection with an investigation of competition problems or a review of high consumer rates on particular routes, according confidential treatment to the information.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison.

[FR Doc. 2019–06470 Filed 4–2–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:38 a.m. on Friday, March 29, 2019, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Kathleen L. Kraninger (Director, Consumer Financial Protection Bureau), and concurred in by Director Joseph M. Otting (Comptroller of the Currency), and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 29, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–06542 Filed 4–1–19; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 008005–014.

Agreement Name: New York Terminal Conference.

Parties: APM Terminals Elizabeth, LC; GCT Bayonne LP; GCT New York LP; Port Newark Container Terminal LLC; and Red Hook Container Terminal LLC.

Filing Party: Christopher DeLacy; Holland & Knight.

Synopsis: The amendment appoints a new agent consistent with the terms of the Agreement.

Proposed Effective Date: 3/22/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/04242.

Agreement No.: 201292.

Agreement Name: Puerto Nuevo Terminals LLC Cooperative Working Agreement.

Parties: Luis A. Ayala Colon Sucrs., Inc. and Puerto Rico Terminals, LLC.

Filing Party: Matthew Thomas; Blank Rome LLP.

Synopsis: The Agreement would authorize Luis A. Ayala Colon (LAC) and Puerto Rico Terminals (PRT), an affiliate of Tote Maritime, to form Puerto Nuevo Terminals (PNT) to operate a marine terminal and provide container stevedoring, terminal and related services in the Port of San Juan, Puerto Rico.

Proposed Effective Date: 5/11/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/21354.

Dated: March 29, 2019.

JoAnne D. O' Bryant,

Program Analyst.

[FR Doc. 2019–06475 Filed 4–2–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *First Holding Company of Cavalier, Inc., Cavalier, North Dakota;* to acquire 100 percent of the voting shares of Northern Sky Bank, Crookston, Minnesota.

Board of Governors of the Federal Reserve System, March 29, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–06469 Filed 4–2–19; 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 Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (FR 4006; OMB No. 7100–0129).

DATES: Comments must be submitted on or before June 3, 2019.

ADDRESSES: You may submit comments, identified by FR 4006, 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 from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper 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 OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, 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, 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. 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: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (DPC).

Agency form number: FR 4006.

OMB control number: 7100–0129.

Frequency: Event-generated.

Respondents: Bank holding companies.

Estimated number of respondents: Section 3(a) DPC: 21; Section 4(c)(2) DPC: 42.

Estimated average hours per response: Section 3(a) DPC: 5 hours; Section 4(c)(2) DPC: 5 hours.

Estimated annual burden hours: Section 3(a) DPC: 105 hours; Section 4 (c)(2) DPC: 210 hours.

General description of report: The Bank Holding Company Act (BHC Act) and the Board's Regulation Y require a bank holding company (BHC) that acquired voting securities or assets through foreclosure or otherwise in the ordinary course of collecting a DPC to seek prior Board approval in order to retain ownership of those shares or assets for more than two years. There are no required formal reporting forms associated with this information collection (the FR 4006 designation is for internal purposes only). Instead, a BHC is required to submit any extension request to the Reserve Bank that has direct supervisory responsibility for the requesting BHC. The Board uses the information provided in the request to fulfill its statutory obligation to supervise BHCs.

Proposed revisions: The Board is proposing to revise the FR 4006 to account for requests for an extension of the section 3(a) holding period for bank DPC property pursuant to section 225.12(b) of the Board's Regulation Y. The FR 4006 currently does not account for this collection of information.

Legal authorization and confidentiality: The FR 4006 is authorized pursuant to sections 3(a) and 4(c)(2) of the Bank Holding Company Act (BHC Act) [1] and sections 225.12(b) and 225.22(d) of Regulation Y.[2] Under sections 3(a) and 4(c)(2) of the BHC Act and sections 225.12(b) and 225.22(d)(1) of the Board's Regulation Y, a BHC is not required to seek prior Board approval before acquiring securities or assets in the ordinary course of collecting a DPC in good faith, if such securities or assets (the ''DPC property'')

[1] 12 U.S.C. 1842(a) and 1843(c)(2).

[2] 12 CFR 225.22(d).

are divested within two years of acquisition. In order to hold the DPC property beyond the two-year period, a BHC is required to seek the approval of the Board. The two-year period may be extended by the Board for up to three additional years, and holdings in certain types of DPC property may be extended for up to five additional years (for a total of 10 years). Pursuant to section 225.12(b) of Regulation Y, a BHC may request an extension of the section 3(a) holding period for voting securities of a bank or BHC acquired in the ordinary course of collecting a DPC in good faith. Pursuant to section 225.22(d)(1) of Regulation Y, a BHC may request an extension of the section 4(c)(2) holding period for voting securities or assets of a nonbanking company acquired in the ordinary course of collecting a DPC in good faith. The FR 4006 is required to obtain the benefit of being permitted to retain ownership, for more than two years, of voting securities or assets acquired in the ordinary course of collection of a DPC. Individual respondents may request that information submitted to the Board, pursuant to sections 225.12(b) and 225.22(d) of Regulation Y, be kept confidential on a case-by-case basis. Such requests generally contain information related to how the BHC acquired shares or assets and the plans of the BHC to divest the shares or assets. Under certain circumstances, this information may qualify under exemption 4 of the Freedom of Information Act, which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, March 28, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–06434 Filed 4–2–19; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWICC–2019–01; Docket No. 2019–0003; Sequence No. 1]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the May 14, 2019 meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES: *Meeting date:* The meeting will be held on Tuesday, May 14, 2019, starting at 9:00 a.m. Central Daylight Time (CDT), and ending no later than 12:00 p.m., CDT.

ADDRESSES: The meeting will be held at the National World War I Museum and Memorial, 100 W 26th Street, Kansas City, MO 64108. This location is handicapped accessible. The meeting will be open to the public. Persons attending are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/about/policies/fragrance.htm* for more information).

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. Eastern Daylight Time (EDT), May 10, 2019, and may be provided by email to *daniel.dayton@worldwar1centennial.org.* Contact Daniel S. Dayton at *daniel.dayton@worldwar1centennial.org* to register to comment during the meeting's 30-minute public comment period.

Registered speakers/organizations will be allowed five (5) minutes and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting, must be received by 5:00 p.m., EDT, on Friday, May 10, 2019. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW, STE 123, Washington, DC 20004–2608, or via telephone at 202–380–0725 (note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes.

Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I.

Further, pursuant to Public Law 113–291 the Commission may enhance the General Pershing Commemorative Work by constructing a World War I Memorial incorporating appropriate sculptural and other commemorative elements, including landscaping, to further honor the service of members of the United States Armed Forces in World War I.

Agenda: Tuesday May 14, 2019

Old Business

- Approval of Minutes of last meeting

New Business

- Public Comment Period
- Executive Director's Report—Mr. Daniel Dayton
- Financial Report—Commissioner Zoe Dunning
- Legislative Update—Mr. Russell Orban
- Fundraising Report—Commissioner Tod Sedgwick
- International Report—Commissioner Monique Seefried
- Memorial Report—Commissioner Edwin Fountain
- Education Report—Commissioner Libby O'Connell

Other Business

- Chairman's Report—Commissioner Terry Hamby
- Other business as may appropriately come before the Commission
- Set next meeting—May 12, 2020, Kansas City, MO
- Adjourn

Dated: March 26, 2019.

Daniel S. Dayton,

Designated Federal Official, World War I Centennial Commission.

[FR Doc. 2019–06278 Filed 4–2–19; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, April 11, 2019, from 11:00 a.m. to 1:00 p.m. (EDT).

ADDRESSES: The meeting will be held virtually (via WebEx).

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland, 20857, (301) 427–1456. For press-related information, please contact Karen Migdail at (301) 427–1855 or *Karen.Migdail@ahrq.hhs.gov.* Closed captioning will be provided during the WebEx. If another accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Friday, April 5, 2019.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality and is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, April 11, 2019, the Council meeting will convene via WebEx at 11:00 a.m. (EDT), with the call to order by the Council Chair and approval of previous Council summary notes. The agenda will include a presentation on AHRQ Accomplishments, an update on AHRQ's budget and an update on the Director's vision for AHRQ. The meeting is open to the public. For information regarding how to access the WebEx as well as other meeting details, please go to *https://www.ahrq.gov/news/events/nac/.*

Gopal Khanna,

Director.

[FR Doc. 2019–06417 Filed 4–2–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990-xxxx]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 3, 2019.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–OWH State Level Paid-60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: State-Level Paid Family Leave Policy Project.

Type of Collection: New.

OMB No.: 0990–XXXX or 0990–NEW-Office within OS—Specific program collecting the data (is applicable).

Abstract: The Department of Health and Human Services (DHHS) Office on Women's Health (OWH) ''provides national leadership and coordination to improve the health of women and girls through policy, education, and innovative programs.'' Through the *State-Level Paid Family Leave Policy Project,* OWH will explore the relationship between women's health and state-level paid family leave (PFL) programs, which provide partial wage replacement to eligible employees to bond with a new child. The project aims to increase awareness of women's health effects in relation to state-level PFL programs among key stakeholders, including advocates, state and federal policymakers, and state program administrators. This information will be used to inform the national conversation about these programs.

The *State-Level Paid Family Leave Policy Project* involves the collection of information on new mothers' health, health behaviors, and ability to fulfill their roles in the workplace, family and community. Data will be collected through 16 one-time focus groups in the four states with fully functioning state-level PFL programs (California, New Jersey, Rhode Island, and New York) with both women who used and women who did not use the program. A questionnaire will be administered prior to the focus groups to collect information on participants' demographic characteristics and other external factors that may affect health. Data collection and analysis will take approximately one year.

Interested individuals will be screened for eligibility. Participants must be mothers with a child under the age of one and be eligible for their state's respective PFL program. To participate as a state-level PFL *user,* mothers must have used the entire state-level PFL benefit. To participate as a state-level PFL *non-user,* mothers must have a baby older than the ''state-level PFL threshold'' and have not taken any state-level PFL. We define the threshold as the time after which mothers are typically out of the temporary disability insurance (TDI) and state-level PFL window (approximately 12 weeks).

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
Focus group screener	Interested Individuals	384	1	15 minutes	96
Demographic questionnaire	Focus group participants	96	1	15 minutes	24
Focus group protocol	Focus group participants	96	1	1 hour and 15 minutes.	120
Total					240

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–06440 Filed 4–2–19; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. A portion of this 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 for the review and discussion of grant applications. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 11, 2019.

Open: 08:00 a.m. to 12:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, Division of Extramural Research Report and, other business of the Council.

Place: National Institutes of Health, 6710B Bethesda Drive, Rm. 1425/1427, Bethesda, MD 20892.

Closed: June 11, 2019.

Time: 01:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Bethesda Drive, Rm. 1425/1427, Bethesda, MD 20892.

Contact Person: Della Hann, Ph.D., Director, Division of Extramural Research, *Eunice Kenney Shriver* National Institute of Child Health and Human Development, NIH, 6710 Rockledge Blvd., MSC 7002, Bethesda, MD 20892, 301–496–8535.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the NIH building. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

To facilitate public attendance at the open session of Council in the main meeting room, Conference Room 1425, please contact Ms. Lisa Kaeser, Office of Legislation and Public Policy, NICHD, at 301–496–0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 1417 and 1411. Individuals will also be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions:*http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS).

Dated: March 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06455 Filed 4–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Competitive Revision Applications to Establish an Addiction Medicine Practice Based Research Network to Address the National Opioid Crisis.

Date: April 3, 2019.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@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.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Justice Community Opioid Innovation Network (JCOIN) Clinical Research Centers (UG1 Clinical Trial Optional).

Date: April 29, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Justice Community Opioid Innovation Network (JCOIN) Methodology and Advanced Analytics Resource Center (U2C Clinical Trial Not Allowed).

Date: April 29, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Justice Community Opioid Innovation Network (JCOIN) Coordination and Translation Center (U2C Clinical Trial Optional).

Date: April 29, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06451 Filed 4–2–19; 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 Special Emphasis Panel; Alzheimer's Disease Drug Development (03).

Date: May 29, 2019.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2c/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 27, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06420 Filed 4–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel Institutional Research Training Grants (IT).

Date: May 3, 2019.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Chief, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 29, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06452 Filed 4–2–19; 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 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 SEP–8: NCI Clinical and Translational R21 and Omnibus R03.

Date: June 19, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caterina Bianco, M.D., Ph.D., Scientific Review Officer Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6459, *biancoc@mail.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 27, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06419 Filed 4–2–19; 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 Comittee: National Institute on Aging Special Emphasis Panel; Drug Repositioning and Combination Therapy for AD (04).

Date: May 29, 2019.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2c/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *Parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 27, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06421 Filed 4–2–19; 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; Treatments for Hydrocephalus and Age-Related Macular Degeneration.

Date: April 15, 2019.

Time: 10:00 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: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroimmunology, Brain Tumors, CNS Infections, and Aging.

Date: April 18, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: 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.*

(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 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06450 Filed 4–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2018–0193]

Polar Icebreaker Program; Record of Decision for the Polar Security Cutter Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Record of decision.

SUMMARY: The U.S. Coast Guard, as lead agency, announces the availability of the Record of Decision for the approved Polar Security Cutter Programmatic Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the Polar Security Cutter Program's design and build of up to six polar icebreakers. This publication serves as the Record of Decision on the final EIS and includes a full summary of the environmental analysis and consequences.

DATES: The decision became operative on March 18, 2019.

ADDRESSES: The complete text of the final EIS and any supporting documents related to this decision are available in the docket which can be found by searching the docket number USCG–2018–0193 at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about this Record of Decision (ROD), email Ms. Christine Wiegand, Assistant Program Manager for Acquisition, Polar Security Cutter Program, U.S. Coast Guard; email *PIBEnvironment@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Table of Abbreviations
II. Record of Decision
III. Background and Issues
IV. Purpose and Need
V. Public Involevement
VI. Alternatives Considered
VII. Summary of Environmental Analysis and Consequences (Preferred Alternative)
A. Acoustic Stressors
B. Summary of Impacts From Acoustic Stressors
C. Physical Stressors
D. Summary of Impacts From Physical Stressors
E. Socioeconomic Impacts
F. Summary of Impacts to Resource Areas
G. Mitigation Measures
H. Monitoring, Research, and Reporting
VIII. Agency Consultation and Coordination
VIII. Conclusion

I. Table of Abbreviations

CFR Code of Federal Regulations
CGC Coast Guard Cutter

EIS Environmental Impact Statement
FR Federal Register
NEPA National Environmental Policy Act
PIBs Polar Icebreakers
PSC Polar Security Cutter
ROD Record of Decision
U.S.C. United States Code

II. Record of Decision

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, Sections 4321 *et seq.* of Title 42 U.S.C., Council on Environmental Quality Regulations (1500–1508 of Title 40 Code of Federal Regulations [CFR], and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions), the Coast Guard announces its decision to implement the Coast Guard's preferred Alternative, Alternative 1, including the full range of mitigation measures, as described in the PSC's Final Programmatic EIS. This decision will enable the Coast Guard to carry out the Coast Guard's primary missions supported by PSC. A detailed description of Alternative 1 is provided in Chapter 2 (Description of the Proposed Action and Alternatives) of the PSC Final Programmatic EIS.

III. Background and Issues

The Coast Guard is a military, multi-mission, maritime service within the Department of Homeland Security and one of the nation's five armed services. In executing its various missions, the Coast Guard protects the public, the environment, and U.S. economic and security interests in maritime regions, including international waters and the coasts, ports, and inland waterways of the U.S., as required to support national security.

As the polar regions of the Arctic and Antarctic become more accessible, they become more important to U.S. and international interests. Polar icebreakers enable the Coast Guard to enforce treaties and other laws needed to safeguard both industry and the environment; provide ports, waterways and coastal security; provide logistical support; and support all other Coast Guard missions. Any increase in vessel traffic in the polar regions increases the potential for more search and rescue missions, water pollution, illegal fishing, and infringement on the U.S. Exclusive Economic Zone, which requires Coast Guard presence. In response to this potential surge in vessel traffic, a long term increase in Coast Guard mission demand is projected, thus requiring additional capacity from PSCs. The Proposed Action would allow the Coast Guard to meet the increasing demand in the polar regions, as well as year-round mission requirements.

IV. Purpose and Need

The Coast Guard's current fleet of polar icebreakers consists of two heavy icebreakers, Coast Guard Cutter (CGC) POLAR STAR and CGC POLAR SEA, and one medium icebreaker, CGC HEALY. The Coast Guard's heavy icebreakers have both exceeded their designed 30-year service life. CGC POLAR STAR was commissioned in 1976 and CGC POLAR SEA in 1978. CGC POLAR STAR completed a service life extension in 2013 to allow CGC POLAR STAR to operate for an additional seven to ten years. CGC POLAR SEA has remained out of service since 2010 and is not expected to be reactivated. The PSC program acquisition strategy to construct up to three PSCs and may (at a future date) expand to include up to three additional icebreakers, with design service lives of 30 years each. The first of these new PSCs is expected to be delivered in 2023. Because the first new PSC would not be operational in the Polar Regions until at least 2023, new information may become available after the completion of the Programmatic EIS. In that case, supplemental NEPA documentation may, as appropriate, be prepared in support of individual proposed actions and tiered to the PSC Final Programmatic EIS. Examples of new information may include, but are not limited to, changes to a species listing status or any other applicable laws and directives, and information regarding mission, training, homeporting, maintenance, and eventual decommissioning of the new PSCs.

PSCs will be designed to carry out the Coast Guard's primary missions supported by the current polar icebreaker fleet. Expected missions include Ice Operations; Defense Readiness; Aids to Navigation; Living Marine Resources; Marine Safety; Marine Environmental Protection; Other Law Enforcement; Ports, Waterways, and Coastal Security; and Search and Rescue. In executing its various missions, the Coast Guard protects the public, the environment, and U.S. economic and security interests in maritime regions, including international waters and the Nation's coasts, ports, and inland waterways, as required to support national security. Legislation and executive orders assign the Coast Guard a wide range of responsibilities applicable to Polar Regions. The Coast Guard derives its authority for the use of icebreaking from several statutes governing execution of its missions. These include 14 U.S.C. 81 (Coast Guard establishment, maintenance, and operation of aids to navigation), 14 U.S.C. 88 (Coast Guard saving of life and property), 14 U.S.C. 89 (Coast Guard law enforcement), 14 U.S.C. 90 (Arctic maritime transportation), 14 U.S.C. 91 (controlling anchorage and movement of vessels), 14 U.S.C. 94 (conduct oceanographic research), and 14 U.S.C. 141 (cooperation with agencies, States, territories, and others). In addition, Executive Order 7521 (Use of Vessels for Icebreaking in Channels and Harbors; 1 FR 2184; December 24, 1936), directs the Coast Guard to assist in keeping channels and harbors open to navigation by means of icebreaking operations.

The Coast Guard proposes to conduct PSC operations and training exercises to meet Coast Guard mission responsibilities in the U.S., Arctic and Antarctic Regions of operation, in addition to vessel performance testing post-dry dock in the Pacific Northwest near the current polar icebreaker homeport of Seattle, Washington. While the exact location for future homeporting has not been determined, the current fleet of polar icebreakers is homeported in Seattle, Washington.

Polar Regions are becoming increasingly important to U.S. national interests. The changing environment in these regions could lead to a rise in human activity and increased commercial ship, cruise ship, and naval surface ship operations, as well as increased exploration for oil and other resources, particularly in the Arctic. One of the Coast Guard's highest priorities is safety of life at sea. This entails the Arctic responsibilities described above as well as assisting with Antarctica logistics at McMurdo Station. Long-term projected increases in Coast Guard mission demand in the Polar Regions would require additional support from PSCs. A lack of infrastructure, polar environmental conditions, and long distances between operating areas and support bases all influence the Coast Guard's ability to provide comparable service and presence in Polar Regions as compared to that provided in other non-polar areas of operation with existing Coast Guard assets.

The PSC Final Programmatic EIS analyzed the potential impacts of up to six new PSCs, as this is the maximum number anticipated to be operational in the Polar Regions under the current PSC program acquisition strategy. A lesser number of icebreakers is expected to result in a similar or reduced impact than what was discussed and evaluated in the EIS. Potential environmental stressors include acoustic (underwater acoustic transmissions, vessel noise, icebreaking noise, aircraft noise, and

gunnery noise), and physical (vessel movement, aircraft or in-air device movement, in-water device movement, icebreaking, and marine expended materials).

V. Public Involvement

The public scoping period began with issuance of the Notice of Intent in the **Federal Register** (83 FR 18319) on April 26, 2018. The scoping period lasted 60 days, concluding on June 25, 2018. The public was provided a variety of methods to comment on the scope of the PSC Final Programmatic EIS during the scoping period. Communication methods used by the Coast Guard to distribute the proposed project information to residents of Alaska included: Radio, newspapers, fliers, electronic mail (email), and websites. Public presentations of the Proposed Action and preliminary findings were provided at public meetings held in Alaska. These meetings were advertised with fliers and newspaper postings, as well as in radio announcements and on social media.

A project website was established to facilitate public input within and outside the Arctic, Antarctic, and Pacific Northwest regions (*http://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Acquisitions-CG-9/Programs/Surface-Programs/Polar-Icebreaker/*). The scheduling of public meetings was publicized in press releases available on the Coast Guard's website, in the **Federal Register** Notice (83 FR 18319; April 26, 2018), as well as in local newspapers—the Anchorage Daily News, the Arctic Sounder, and the Nome Nugget and social media sites, such as Facebook. Targeted emails were sent to the Tribal communities in the regions of Nome (Bering Straits Region), Kotzebue (Nana Region), Anchorage, and Barrow/Utqiagvik (Arctic Slope Region) to notify them that the public meetings were taking place. Public meetings were held in Nome (May 7, 2018), Kotzebue (May 9, 2018), Anchorage (May 11, 2018), and in Barrow/Utqiagvik (May 14, 2018). The public meeting in Nome had 10 attendees, the meeting in Kotzebue had 4 attendees, and the meeting in Barrow/Utqiagvik had 5 attendees. The meeting in Anchorage was not attended by any members of the public. A Notice of Availability and request for comments was publicized in the **Federal Register** Notice (83 FR 38317; August 6, 2018) to notify the public of the 45-day public review period for the PSC Draft Programmatic EIS. Comments from the public are addressed in Appendix C of the PSC Final Programmatic EIS.

A notice of availability of final programmatic EIS was posted in the docket on February 15, 2019 along with the full text of the final EIS. The program waited 30 days to make a final decision on the proposal. The Coast Guard received one comment which did not require revisions to the Final PSC Programmatic EIS.

VI. Alternatives Considered

Two alternatives in addition to the Proposed Action (Alternative 1, Preferred Alternative) were evaluated in the PSC Final Programmatic EIS. The following provides a brief description of each alternative considered:

Alternative 1. Proposed Action (Preferred Alternative). The design, build, and operation of up to six PSCs.

Alternative 2. Leasing. Considered various forms of vessel leasing, such as those leases used by the U.S. Navy, the National Science Foundation, other federal agencies, and the domestic maritime industry.

Alternative 3. No Action. No new icebreakers would be built or leased, and the Coast Guard would fulfill its missions in the Arctic and Antarctic using existing polar icebreaker assets.

VII. Summary of Environmental Analysis and Consequences (Preferred Alternative)

A. Acoustic Stressors

The acoustic stressors from the Proposed Action include underwater acoustic transmissions (*e.g.,* navigational technologies), vessel noise, icebreaking noise, aircraft noise, and gunnery noise. Potential acoustic impacts may include auditory masking (a sound interferes with the audibility of another sound that marine organisms may rely on), permanent threshold shift, temporary threshold shift, or a behavioral response. In general, the Coast Guard would use a PSC that would operate navigational technologies, including radar and sonar, while underway. Marine species within the Arctic and Antarctic proposed action areas may also be exposed to icebreaking noise associated with a PSC's activities. In assessing the potential impact to species from acoustic sources, a variety of factors were considered, including source characteristics, animal presence, animal hearing range, duration of exposure, and impact thresholds for those species that may be present. The Coast Guard evaluated the data and conducted an analysis of the species distribution and likely responses to the acoustic stressors based on available scientific literature. Icebreaking noise is generally described as a low frequency, 10 to 100 Hertz (Hz) (Roth et al. 2013), non-impulsive sound. Similarly, vessel noise is also characterized as low frequency. As such, a species response to icebreaking noise would be expected to be similar to their response to vessel noise. The Coast Guard used specific methods, described below, to quantify potential effects to marine mammals from icebreaking. Non-marine mammal biological resources, such as seabirds, fish, and invertebrates that may potentially overlap with the proposed icebreaking area, were analyzed using qualitative methods, also described below, because the modeling exposure criteria were developed only for marine mammals and sea turtles. Sea turtles were not assessed for icebreaking sound exposure as their geographic ranges do not overlap any a proposed icebreaking areas.

Marine mammals are difficult to observe in real time and have varied behaviors based on species, geographic location, and time of year. Furthermore, field-based information on the effects of icebreaking on marine mammals is unavailable. Therefore, mathematical modeling was necessary to estimate the number of marine mammals that may be affected by icebreaking activities. The U.S. Department of the Navy (Navy) has invested considerable effort and resources analyzing the potential impacts of underwater sound sources (*i.e.,* impulsive and non-impulsive sources) on marine mammals and sea turtles. The Navy has used the Navy Acoustic Effects Model (NAEMO) to model acoustic impacts to marine mammals. NAEMO has been refined since its inception and documented in many environmental assessments and impact statements developed for Navy exercises. NAEMO was developed based on published research, in collaboration with subject matter experts, and the Center for Independent Experts—an external peer-review system under the purview of National Marine Fisheries Service (NMFS). The Coast Guard used the Navy's NAEMO model to quantify the potential impacts on marine mammals from icebreaking associated with the Proposed Action. Based on modeling results, the following marine mammals exposed to icebreaking would be expected to elicit a behavioral reaction: Antarctic minke whale (*Balaenoptera bonaerensis*), Arnoux's beaked whale (*Berardius arnuxii*), bearded seal (*Erignathus barbatus*), blue whale (*Balaenoptera musculus*), bowhead whale (*Balaena mysticetus*), crabeater seal (*Lobodon carcinophaga*), Gray's beaked whale (*Mesoplodon*

grayi), humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), leopard seal (*Hydrurga leptonyx*), minke whale (*Balaenoptera acutorostrata*), polar bear (*Ursus maritimus*), ringed seal (*Phoca hispida*), Ross seal (*Ommatophoca rossi*), southern bottlenose whale (*Hyperoodon planifrons*), and Weddell seal (*Leptonychotes weddellii*).

In general, if marine mammal, invertebrate, fish, bird, or sea turtle hearing ranges did not overlap with the frequency of the acoustic sources, such as for acoustic transmissions, further analysis was not conducted in the Programmatic EIS. If hearing ranges did overlap, the analysis in the PSC Programmatic Final EIS considered the temporary nature of the Proposed Action and the current ambient noise levels in the proposed action areas, which all limited the exposure and impact from acoustic stressors to those species. Qualitative analyses of vessel noise and icebreaking noise were conducted similarly for all species groups, with the exception of marine mammals (where the NAEMO model was used to analyze potential impacts from icebreaking noise), as both sounds are typically characterized as low frequency (less than 1 kilohertz and between 10 to 100 Hz, respectively) (Roth et al. 2013) acoustic sources. Qualitative analyses of potential impacts from exposure to aircraft noise considered in-air hearing ranges for exposed species (when known or a surrogate species was evaluated) and the dominant tones in noise spectra from helicopters and fixed wing aircraft, as below 500 Hz (Richardson et al. 1995); qualitative analyses evaluated both in-air and underwater exposure from the air-to-surface interface. Since the typical operating altitude for helicopters and unmanned aerial vehicles (UAVs) associated with the Proposed Action would be at or above 1,000 feet (305 meters), it was assumed that the received levels from aircraft would significantly decrease from the sound levels expected at the source.

B. Summary of Impacts From Acoustic Stressors

Based on the analysis, impacts from acoustic sources associated with the Proposed Action are expected to result in, at most, minor to moderate behavioral responses over short and intermittent periods. Underwater acoustic transmissions, vessel noise, icebreaking noise, aircraft noise, and gunnery noise would not result in significant impact to invertebrates, fish, essential fish habitat (EFH), birds, sea turtles, and marine mammals. Those species listed as endangered or threatened under section 7 of the Endangered Species Act (ESA), would not be expected to respond in ways that would significantly disrupt normal behavior patterns which include, but are not limited to: Migration, breathing, nursing, breeding, feeding, or sheltering. Acoustic stressors from the Proposed Action would not cause population level effects to any ESA-listed species in the proposed action areas. Additionally, when possible, the Coast Guard would avoid all known critical habitat areas. For those species where authorizations or permits may be required, the Coast Guard intends to consult with the appropriate regulatory agency to ensure environmental compliance. The timing of this permit request would coincide more closely with the time the first PSC is operational, due to expected updates to information and potential changes to a species listing status.

C. Physical Stressors

Vessels and aircraft associated with the Proposed Action would be widely dispersed throughout the proposed action areas. The physical stressors from the Proposed Action include vessel movement, aircraft movement, autonomous underwater vehicle (AUV) movement, icebreaking, and military expended materials (MEM). The physical presence of aircraft and vessels could lead to behavioral reactions from visual or auditory cues. In assessing the potential impact to species from physical sources, a variety of factors were considered, including vessel and operation characteristics, animal presence, and likelihood of exposure. The Coast Guard evaluated the data and conducted an analysis of the species distribution and likely responses to the physical stressors based on available scientific literature. Reactions to vessels often include changes in general activity (*e.g.,* from resting or feeding to active avoidance), changes in surface respiration or dive cycles (marine mammals), and changes in speed and direction of movement. The severity and type of response exhibited by an individual may also be influenced by previous encounters with vessels. Some species have been noted to tolerate slow-moving vessels within several hundred meters, especially when the vessel is not directed toward the animal and when there are no sudden changes in direction or engine speed (Richardson et al. 1995). In addition, vessels and aircraft could collide with resources found in all proposed action areas.

The PSC Final Programmatic EIS considered vessel tow training, when evaluating the potential impacts of vessel movement on resources in the proposed action areas. In general, short-term and localized disturbances are anticipated. The likelihood that an individual would interact with the vessel tow cable and become entangled is low because the tow lines would have no loops or slack, thereby reducing the likelihood of entanglement. Although the tow cable and towed vessel may impact fish, birds, and marine mammals encountered along a tow route, the chance that such an encounter would result in serious injury is extremely remote because of the low probability that an individual of a species would overlap with the infrequent tow training events.

Potential collision of vessels with biological resources was also considered in the analysis of vessel movement. The likelihood that a vessel would strike an invertebrate or a fish is extremely low because many of these animals would not be expected in the path of the vessel due to benthic distribution and any surface-dwelling species would be expected to avoid the vessel. The probability of a seabird colliding with a vessel would increase at night and in situations of poor visibility; however, the likelihood of a vessel collision with a bird is extremely low because a PSC would likely operate farther offshore than where the majority of birds would be expected; a PSC would only operate navigational safety lights at night that would not be expected to attract birds; and during times of reduced visibility, a vessel would likely reduce vessel speeds for navigational safety. Flightless birds, including penguins and molting birds, would also be susceptible to a vessel collision; however, the Coast Guard's Standard Operating Procedures (SOP) and Best Management Practices (BMP) would minimize potential impacts. Sea turtles are also known to be attracted to lights, but similar to birds, the navigational safety lights would not be expected to act as an attractant to sea turtles.

Marine mammal species most vulnerable to collision are thought to be those that spend extended periods at the surface or species whose unresponsiveness to vessel sound makes them more susceptible to vessel collisions. Although the maximum speed of the PSC during vessel propulsion testing is 12–17 knots, a PSC is expected to operate at slower speeds during most of the Proposed Action activities. While slower speeds could decrease the chance of a fatal collision, it will not eliminate the risk of a collision. In addition, any vessel collision has the chance of causing

serious injury or mortality. However, the Coast Guard's SOPs and BMPs, in addition to the slow vessel speeds, would decrease the risk of a collision with a marine mammal. AUV movement could impact biological resources, including invertebrates, fish, seabirds, and marine mammals; however, the potential for an AUV to strike individuals is similar to that identified for vessels in the analysis. Any animal that was displaced would be expected to resume normal activities due to the short-term and localized nature of the disturbance. Collision risk with an AUV is considered to be extremely low.

With the exception of birds, no other biological resources are expected to interact with aircraft, so other biological resources were not assessed. The aircraft used during the Proposed Action would be the MH–60 Jayhawk helicopter and UAVs for ice reconnaissance. Birds would be most at risk of a strike during takeoff and landing because the helicopter is passing through the lower altitudes where birds may be found. Bird strikes are a serious concern for helicopter crews not only because of the risk to the birds, but also because they can harm aircrews and equipment. For this reason, the Coast Guard would avoid large flocks of birds to increase personnel safety and minimize any risk associated with a bird-aircraft strike and would follow SOPs and BMPs to avoid critical habitat areas and areas where there are known gatherings of seabirds. While there is some risk of an aircraft-seabird strike associated with the Proposed Action, the risk of a strike is low. Should a collision occur, bird mortality or injuries due to the strike caused by helicopter or UAV movement may result, but population level impacts to seabirds are not expected.

Icebreaking would occur in the Arctic and Antarctic proposed action areas at speeds of 3 to 6 knots. It has the potential to impact marine species by altering habitats, causing behavior reactions, or colliding with resources. There would be no impact to sea turtles as they are not found in the icebreaking areas. Marine vegetation living under ice may encounter short-term and localized disturbances from icebreaking; however, no long-term or population level effects are expected as the amount of biomass that would potentially be impacted is insignificant relative to the overall biomass of the system. Due to the low speed of the PSC during icebreaking operations, it is expected that fish species, along with seabirds and marine mammals, would exhibit temporary behavioral responses to the presence of icebreaking. Icebreaking is not expected to significantly alter Arctic cod ice floe habitat, the only EFH that has the potential to overlap with potential icebreaking areas. In the Antarctic proposed action area, Adélie penguins breed on land, and emperor penguins breed in the austral autumn; however, neither species would be exposed to icebreaking operations in the austral summer, when most icebreaking in the Antarctic is expected to occur. For marine mammal species, because the noise associated with icebreaking activities is most likely to result in marine mammals avoiding the PSC or area for a short period, it is highly unlikely that a PSC would strike a marine mammal or cause any physical harm. However, pinnipeds and polar bears that haul out on the ice may be more susceptible to icebreaking impacts. Icebreaking may result in localized changes to the polar bear and proposed ringed seal critical habitat as larger sheets of floating ice are broken down into smaller sizes. However, icebreakers do not diminish or destroy ice habitat because the amount of ice that is broken up relative to the overall total amount of available ice is small. Since the impact would be limited only to the area directly in the path of the PSC, short-term and localized disturbances would be expected and any animal that was displaced would be expected to resume normal activities after any brief disturbance.

MEM were assessed, including ingestion of MEM by marine species, when evaluating the potential impacts of gunnery training activities on resources in the proposed action areas. MEM from gunnery training activities would include targets, target fragments, and inert small caliber projectiles that would not be recovered. Most likely, the targets used would drift with currents until popping, then sink through the water column and end up on the seafloor. Impacts on soft bottom habitats from small caliber projectiles would be short term, as these are constantly moving and shifting. It is anticipated that, over time, projectiles could become colonized by invertebrates, thus becoming part of the bottom habitat. Due to the short-term impact of MEM on the seafloor, MEM is not anticipated to adversely affect the quality or quantity of EFH. Although unlikely, small pieces of MEM may be ingested by an organism; however, targets and target fragments left as expended material are not in high enough densities to cause population level impacts.

D. Summary of Impacts From Physical Stressors

Based on the analysis, impacts from physical stressors associated with the Proposed Action are expected to result in, at most, minor to moderate behavioral responses over short and intermittent periods. Devices associated with the Proposed Action with a potential for entanglement include the lines used in vessel tow. For an organism to become entangled in a line or material, the materials must have certain properties, such as the ability to form loops and a high breaking strength. Towing lines would not be expected to have any loops or slack. The likelihood that a biological resource would become entangled in tow lines is extremely low. Vessel movement, aircraft movement, AUV movement, icebreaking, and MEM would not result in significant impact to bottom habitat and sediment, marine vegetation, invertebrates, fish, EFH, birds, sea turtles, and marine mammals.

Those species listed as endangered or threatened under section 7 of the ESA would not be expected to respond in ways that would significantly disrupt normal behavior patterns which include, but are not limited to: Migration, breathing, nursing, breeding, feeding, or sheltering. Physical stressors from the Proposed Action would not cause population level effects to any ESA-listed species in the proposed action areas. When possible, the Coast Guard would avoid all known critical habitat areas.

The Proposed Action includes the breaking of ice and ice is a physical and biological feature essential to the conservation of ESA-listed species. However, during icebreaking, the Proposed Action would not alter the specific physical or biological features of that ice which is essential to the conservation of ESA-listed species, including ringed seal and polar bear sea ice habitat. For those species where authorizations or permits may be required, the Coast Guard intends to consult with the appropriate regulatory agency to ensure environmental compliance. The timing of this permit request would coincide more closely with the time the first PSC is operational, due to expected updates to information and potential changes to a species listing status.

E. Socioeconomic Impacts

Commercial fishing, recreational fishing, research, transportation and shipping, tourism, and subsistence hunting and cultural resources are the socioeconomic resources that would be impacted by the Proposed Action. The predominant socioeconomic impact of a PSC would be an increased Coast Guard presence in the proposed action areas and the Coast Guard's jurisdictional areas. Replacement of the Coast Guard's

aging polar icebreaker fleet would facilitate the Coast Guard's ability to support the Coast Guard missions including law enforcement, consistent search and rescue capabilities, and on-going research operation support.

F. Summary of Impacts to Resource Areas

An increase in the Coast Guard icebreaking fleet would be beneficial, and any potential negative impacts caused by the Coast Guard's presence and operations and training would be mitigated by the implementation of SOPs and BMPs. Additionally, outreach and educational programs conducted by the Coast Guard within the proposed action areas would facilitate communication between Coast Guard and the communities that they serve. More readily available Coast Guard support during an at-sea emergency is the principal benefit from the Proposed Action to commercial fishing, recreational fishing, transportation and shipping, tourism, and cultural resources and the communities that depend on them.

Vegetation. MEM may sink to the bottom during gunnery training, but any impacts to marine vegetation, if present, would be temporary. A PSC would also not set the anchor in areas where marine vegetation is likely to occur in the proposed action areas. No significant impacts or significant harm to marine vegetation is expected in all proposed action areas.

Invertebrates. Vessel and icebreaking noise, if perceived by an invertebrate, would likely result in avoidance behavior or other short term temporary responses, but would not result in any population level impact. Vessel and AUV movement has the potential to impact marine invertebrates either by disturbing the water column or directly striking the organism, if it is present on or near the ice. Although unlikely, invertebrates could be killed or displaced during icebreaking. Because the impact would be localized to the immediate path of a PSC, icebreaking disturbance would not be expected to have population level impacts. Vessel noise, icebreaking noise, vessel movement, AUV movement, and icebreaking would not result in significant impact or result in significant harm to invertebrates in all proposed action areas.

Habitats. Acoustic transmissions could increase in ambient sound level; however, this potential reduction in the quality of the acoustic habitat would be localized and temporary. Icebreaking associated with the Proposed Action may affect the quality or quantity of Arctic cod EFH; however, the effects of icebreaking on Arctic cod EFH would be minimal, due to the small area of icebreaking as compared to the overall quantity of ice floe habitat. MEM impacts on soft bottom habitats would be short term, as sediments are constantly moving and shifting. Underwater acoustic transmissions, icebreaking, and MEM would not result in significant impact or significant harm to EFH in the Arctic and Pacific Northwest proposed action areas. No EFH is designated in the Antarctic proposed action area.

Fish. Underwater acoustic transmissions, vessel noise, icebreaking noise, and icebreaking would likely result in short-term and insignificant behavioral reactions or avoidance behavior, and thus, would not be expected to have any population level impacts. AUV and vessel movement may result in short-term and local displacement of fish in the water column. Although unlikely, small pieces of MEM from gunnery training and small caliber practice munitions may be ingested by an individual. Vessel noise, icebreaking noise, vessel movement, AUV movement, icebreaking, and MEM, would not result in significant impacts or significant harm to fish in all proposed action areas.

Marine Mammals. Acoustic transmissions and icebreaking noise may result in minor to moderate behavioral responses to exposed individuals, but the behavioral response is expected to be temporary. Vessel noise may elicit a minor behavioral response by exposed individuals. Any noise generated by the UAV is expected to be minimal and below the hearing threshold of marine mammals, both in air and underwater. The noise from the UAV is not expected to penetrate below the water's surface; however, in the unlikely event that a marine mammal is exposed to UAV noise underwater, any behavioral response is expected to be very minor. The probability of a vessel encountering a marine mammal is expected to be low, decreasing the risk of a PSC-marine mammal collision. The risk of a collision between an AUV moving through the water and a marine mammal is extremely low. It is expected that icebreaking noise would alert marine mammals to the presence of a PSC before icebreaking would overlap with a marine mammal. Therefore, due to the expected avoidance behaviors caused by icebreaking noise, the likelihood that a PSC would collide with a marine mammal during icebreaking is extremely low. Pinnipeds or polar bears that may be observed on the surface of the ice may be more susceptible to impacts caused by icebreaking, but avoidance responses are also expected and SOPs and BMPs, such as trained Coast Guard lookouts, would minimize any potential impacts. During the Arctic summer months, from May to September, pupping would not occur and subnivean lairs would not be occupied. Icebreaking would only occur when needed, and based on historical icebreaking, the majority occurs during the summer months. Therefore, the likelihood that a PSC would impact a subnivean lair is low. MEM has the potential to impact marine mammal species that feed on the bottom, if ingested, but the likelihood that a marine mammal would ingest MEM is extremely low. The Proposed Action is not expected to cause abandonment of breeding or avoidance of breeding areas, disruption of migration or feeding, or significant disruption to pinniped haul outs. Underwater acoustic transmissions, vessel noise, icebreaking noise, aircraft noise, vessel movement, AUV movement, icebreaking, and MEM would not result in significant impact or significant harm to marine mammals.

Sea Turtles. Vessel noise in the open ocean may cause a startle response in sea turtles; however, any response is expected to be short term and temporary. Vessel noise from a PSC would not be expected to impact a sea turtle's ability to perceive other biologically relevant sounds. Although sea turtles would likely hear and see approaching vessels, a risk of a vessel collision with a sea turtle exists; however, sea turtles spend most of their time submerged, which would reduce their risk of a vessel collision. Vessel noise and vessel movement would not result in significant impact or result in significant harm to sea turtles in the Pacific Northwest proposed action area or in the Arctic proposed action area (although the leatherback sea turtle is considered extralimital). Aircraft movement, aircraft noise, icebreaking, and icebreaking noise would have no significant impact or significant harm on sea turtles as sea turtles would not overlap in areas where aircraft operations and icebreaking are expected.

Birds. Vessel noise, icebreaking noise, vessel movement, and icebreaking would likely result in temporary behavioral responses. Any increase in ambient noise as a result of icebreaking or vessel movement would be temporary and localized to the position of the vessel as it transits or when icebreaking. Aircraft noise and gunnery noise may elicit, at most, short-term behavioral or physiological responses to exposed

birds, such as an alert or startle response, or temporary increase in heart rate. While there is some risk of an aircraft-seabird strike, due to Coast Guard mitigation measures (*e.g.,* limited duration of aerial operations) and avoidance of aircraft by seabirds, the risk of a strike is low. The potential for a bird strike by the AUV is extremely low, given the limited amount of time seabirds spend in the water relative to the air and low likelihood a diving seabird would overlap with AUV routes. Because of the small number of gunnery training targets, and the distance at which targets would be dispersed in the Arctic and Pacific Northwest proposed action areas, target and target fragments would not present a significant threat to seabird populations. Vessel noise, icebreaking noise, aircraft noise, gunnery noise, vessel movement, aircraft movement, AUV movement, icebreaking, and MEM would not result in significant impact or significant harm to seabirds.

G. Mitigation Measures

The Proposed Action includes SOPs and BMPs developed during federal and state agency permitting and approval processes, or as standard provisions for Coast Guard work. These SOPs and BMPs would be employed to avoid or minimize potential effects on the environment. Although SOPs and BMPs are established on a vessel-by-vessel basis, SOPs and BMPs currently in use by other icebreaking vessels would likely be used as guidance for any new PSC. Examples of SOPs and BMPs include avoidance of close approach to visible protected species and habitats and posting lookouts to alert vessels when a protected species is sighted to try and avoid areas where protected species are commonly observed.

The programmatic approach that the Coast Guard has taken streamlines the procedures and time involved in consultations for broad agency programs or numerous similar activities with predictable effects on listed species and/or critical habitat, thus reducing the amount of time spent on individual project-by-project consultations. The Coast Guard has worked collaboratively with the appropriate regulatory agencies through the consultation process to develop mitigation measures. The Coast Guard also anticipates working collaboratively with the appropriate regulatory agencies through the permitting processes to finalize the mitigation measures. While these are subject to change (given the timeframe until PSCs are fully operational), the SOPs and BMPs in use by current icebreakers are as follows:

- Coast Guard Headquarters (HQ), Area, and District operating procedures and directives for Coast Guard vessels and aircraft designed to minimize negative interactions with MPS and within MPAs, including formalized speed and approach guidance around marine mammals.
- Enforcement of the ESA, MMPA, National Marine Sanctuaries Act (NMSA), and other pertinent environmental statutes designed to protect marine protected species and Marine Protected Areas.
- Participation in regional multiagency working groups, recovery teams, implementation teams, take reduction teams, sanctuary advisory councils, and task forces.
- Properly training lookouts on marine mammal detection and identification and maintaining those lookouts aboard vessels at all times.
- Establishment of Memoranda of Agreement (MOA) with the National Marine Sanctuaries (NMS) outlining procedures for coordinating enforcement activities.
- Providing routine surveillance of the NMS concurrently with other Coast Guard operations, and providing specific targeted or dedicated law enforcement as appropriate. NMS surveillance and enforcement is incorporated into routine patrol orders where feasible.
- Subject to availability of resources, providing other agencies with platforms to conduct critical MPS research and recovery efforts during stranding and recovery operations.
- Regional Fisheries Training Centers (RFTCs) provide applicable ESA, MMPA, and NMSA enforcement training to Coast Guard personnel supporting the MPS mission.
- Participation in the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP) as a Co-Investigator. Via this designation, Coast Guard personnel provide the following support to NMFS: (a) Responding to distressed marine mammals, (b) temporary restraint or captivity, (c) disentangling, (d) transporting, (e) attaching tags, and (f) collecting samples.
- Formal guidelines for appropriate disposal of animal carcasses.
- Providing opportunistic marine mammal sighting information to the National Marine Mammal Laboratory (NMML) Platforms of Opportunity Program (POP).

H. Monitoring, Research, and Reporting

Through its Living Marine Resource program, the Coast Guard is one of the nation's primary sponsors of scientific research and monitoring of marine species. Law enforcement operations are also a part of the Coast Guard mission. Law enforcement missions, including any PSC support of law enforcement activities, are covered under Title 14 U.S.C. and 6 U.S.C. 468 and 14 U.S.C. 89. The Coast Guard provides federal law enforcement presence over the entire U.S. Exclusive Economic Zone, covering nearly 3.4 million square miles of ocean. Coast Guard activities ensure compliance with fisheries and marine protected species regulations on domestic vessels; prevent over-fishing, reduce mortality of protected species, and protect marine habitats by enforcing domestic fishing laws and regulations; and, enforcing the MMPA and the ESA.

The Coast Guard will submit a report documenting any incident involving protected resources or species to the appropriate regulatory agency. In these reports, the Coast Guard will describe the level of training conducted during the reporting period. These reports will also include information on biological resources that were sighted, specifically any marine mammals or seabirds, and will include information on each individual sighted related to mitigation implementation. If they occur, the Coast Guard will report incidents involving biological resource, such as bird aircraft strikes, marine mammal vessel strikes, observed injury or mortality to marine mammals or sea birds, and injury or mortality of ESA-listed species.

The Coast Guard and the regulatory agencies will use the information contained within monitoring, research, activity, and incident reports when evaluating the effectiveness and practicality of mitigation and determining if adaptive adjustments to mitigation measures may be appropriate.

VIII. Agency Consultation and Coordination

The Coast Guard consulted and coordinated with federal agencies, including the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), and federally recognized tribes (Alaska and Washington) in conjunction with actions addressed in the PSC Final Programmatic EIS.

- *Endangered Species Act.* The Coast Guard submitted a request for consultation under section 7 of the ESA in December 2017, to the USFWS and NMFS for those endangered or threatened species under their respective jurisdictions. On October 30, 2018 and November 15, 2018, the Coast Guard received a letter from the USFWS and NMFS, respectively, acknowledging

the start of programmatic formal consultation pursuant to section 7(a)(2) of the ESA. On November 20, 2018, the Coast Guard sent a letter to the USFWS and NMFS under Section 7(d) of the ESA, indicating that the Coast Guard would proceed with the contract award and vessel construction. The Coast Guard determined that the design and construction of the PSCs would not constitute an irreversible or irretrievable commitment of resources which would foreclose the formulation or implementation of reasonable and prudent alternative measures that may be included in future biological opinions issued by the Services. The Coast Guard anticipates that any reasonable and prudent alternatives would focus on the future operations of the PSCs and not the design and construction of the vessels. Additionally, the design and build of the PSCs would have no effect on ESA-listed species or designated critical habitat.

The Coast Guard anticipates that both NMFS and the USFWS will issue their programmatic biological opinions on the Proposed Action in 2019. The Coast Guard recognizes that new information regarding the Proposed Action and biological resources in the proposed action area may change before the first PSC is operational (as soon as 2023). As part of the programmatic consultation process, the Coast Guard will continue to coordinate with both regulatory agencies and if necessary, reconsult under section 7 of the ESA if there are any changes in the Proposed Action or biological resources in the proposed action areas.

• The Marine Mammal Protection Act. The MMPA of 1972, as amended (16 United States Code [U.S.C.] 1361 *et seq.*) prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas and the importation of marine mammals and marine mammal products. Coast Guard Instruction [CGD17INST] 16214.2A (U.S. Coast Guard 2011) outlines procedures for avoiding marine mammals and protected species; reporting marine mammal and protected species sightings, strandings and injuries; and enforcing the MMPA and ESA. The Coast Guard is not requesting authorization under Section 101(a)(5) of the MMPA at this time, because the Proposed Action discussed in the PSC Final Programmatic EIS will not occur until the first PSC is delivered and operational (2023); however, the PSC Final Programmatic EIS may contain information relevant and applicable to assist with future Coast Guard consultations that are in support of a request for future incidental take authorizations under the MMPA. As part of the MMPA, the Coast Guard intends to prepare a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses.

• *Magnuson-Stevens Fishery Conservation and Management Act.* In accordance with the Magnuson-Stevens Act, applicable regulations, and the Department of Homeland Security and Coast Guard instructions and directives, the PSC Final Programmatic EIS evaluates the potential for significant impact or environmental harm from the Proposed Action. The Coast Guard is not requesting Magnuson-Stevens Act consultation at this time, because the Proposed Action discussed in the PSC Final Programmatic EIS concluded that based on the best available information, no effects to EFH are anticipated. However, since the first PSC is scheduled to be delivered in 2023; the PSC Final Programmatic EIS may contain information relevant and applicable to support future Coast Guard consultations on EFH as required under the Magnuson-Stevens Act, particularly as new information is obtained.

• *The Rights of Federally Recognized Tribes (Indian and Alaska Native).* As part of the MMPA process (see Section 1.5.17), the Coast Guard intends to prepare a Plan of Cooperation. To meet the Coast Guard's mission responsibilities in the polar regions, the Coast Guard plans to establish regular and meaningful communication to consult and collaborate with Alaska Natives and tribal officials regarding the Proposed Action. The Coast Guard would not interfere with a tribe's treaty rights or impinge on access to any area that provides these resources.

IX. Conclusion

Based on factors analyzed in the Final PSC Programmatic EIS, including training and operations objectives, best available science and modeling data, potential environmental impacts, and input and expertise of Federal agencies, federally recognized tribes, and the public, the Coast Guard selects Alternative 1 for implementation. Alternative 1, the Coast Guard's Preferred Alternative, will fully meet the Coast Guard's requirements in the polar regions. By implementing the mitigation measures identified in the Final PSC Programmatic EIS and associated regulatory documents, and adhering to monitoring requirements and management plans described herein, the Coast Guard has adopted all practicable means to avoid or minimize environmental harm associated with implementing Alternative 1. In addition, the Coast Guard assessed the effects of Alternative 1 in accordance with Executive Order 12114 and concluded that there would be no significant harm to the environment in areas outside of the United States and possessions.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: March 29, 2019.

Timothy J. Connors,

Captain, U.S. Coast Guard, Program Manager, Polar Icebreaker Program.

[FR Doc. 2019–06468 Filed 4–2–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No.: USCBP–2019–0012]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Steel Special Profiles for the Manufacture of Forklift Truck Masts and Carriages

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain steel special profiles from the United Kingdom and Germany, imported for use in manufacturing forklift masts or carriages. In New York Ruling Letter (NY) N293371, dated February 8, 2018, CBP classified the steel special profiles under subheading 8431.20.00, HTSUS, as parts suitable for use solely or principally with forklifts. Petitioner contends that based on their condition as imported and the processing that needs to be undertaken after importation, the steel special profiles should be classified under subheading 7216.50.00, HTSUS, as hot-rolled nonalloy steel profile shapes. Petitioner further contends that the result of this ruling is that the products are avoiding the application of additional duties for steel imposed by Presidential Proclamation 9705 of March 8, 2018, under Section 232. This document invites comments with regard

to the correctness of the current classification.

DATES: Comments must be received on or before May 3, 2019.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2019–0012.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K St. NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of certain steel special profiles. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Steel of West Virginia, Inc. (Petitioner), which manufactures steel shapes or profiles for sale to forklift truck manufacturers and is located in Huntington, West Virginia. Petitioner meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in Title 19 of the Code of Federal Regulations (19 CFR 175.3(a)).

Petitioner is requesting that U.S. Customs and Border Protection (CBP) reclassify the merchandise, referred to as ''incomplete steel mast rails and finger bars,'' in NY N293371, dated February 8, 2018. Petitioner contends that the merchandise is merely steel special profile shapes classifiable under subheading 7216.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N293371, CBP described the merchandise as ''either (1) cut to a fixed length in accordance with customer instructions or (2) in lengths designed to fit within the transporting cargo container . . . in their condition as imported, the mast rails and finger bars are not ready for direct use in fork-lifts.'' CBP applied General Rule of Interpretation (GRI) 2(a) to classify the subject merchandise as a blank for a part of a forklift in subheading 8431.20.00, as ''Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427.''

Petitioner maintains that use of GRI 2(a) is inappropriate because the merchandise meets the definition of an angle shape or section in Note 1(n) to Chapter 72. Moreover, Petitioner contends that the profiles must undergo extensive manufacturing after importation to make them suitable for use in the mast or carriage of a forklift. As such, according to Petitioner, the profiles do not have the essential character of forklift truck parts and are not excluded from classification by Note 1(f) to Section XV, pursuant to which articles of section XVI, HTSUS (machinery, mechanical appliances and electrical goods), are not covered by section XV, HTSUS.

Applicable Legal Principles

Classification under the HTSUS is made in accordance with the GRIs. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied, in numerical order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties and, therefore, not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP's position is that the ENs should always be consulted. *See* Treasury Decision (T.D.) 89–80, 54 FR 35127, 35128 (Aug. 23, 1989).

Elaboration of the Petitioner's Views

Petitioner contends that the proper classification for the steel special profiles is subheading 7216.50.00, HTSUS, which covers ''Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded,'' in accordance with Note 1(n) to Chapter 72, HTSUS which defines steel ''angles, shapes and sections'' as ''products having a uniform solid cross section along their whole length which do not conform to any of the definitions at (i), (j), (k), (l) or (m) above or to the definition of wire.'' Petitioner argues that Note 1(f) to Section XV is inapplicable because the merchandise is not ready for use as forklift parts, or even for assembly into the mast or carriage part of a forklift, in its condition as imported. Petitioner contends that the steel special profile parts, even when referred to as ''incomplete mast rails and finger bars,'' require many additional steps until they are ready for assembly into a mast or carriage, such as:

- *Cutting to length* from 20–35 feet to fit into a shipping container down to approximately 7 feet for masts and 3 feet for carriages.
- *Shot blasting and straightening* to prepare for welding and painting.
- *Machining and/or torch cutting* to remove portions of the flange and to notch the pieces in the appropriate places.
- *Drilling* multiple holes in accordance with its use and placement in the carriage or mast.
- *Welding* to modify the profile section depending on its ultimate position in the carriage or mast.
- *Cleaning and painting* for final installation in the carriage or mast.

Petitioner contends that these manufacturing processes significantly alter the steel profiles after importation to create the component assembled into a mast or carriage. Given the amount of extra processing required for steel profile shapes, even when referred to as ''incomplete mast rails and finger bars,'' Petitioner maintains that the imported merchandise does not have the essential character of a forklift part and cannot be classified as such.

In support of its argument, Petitioner cites to GRI 2(a), which states: ''Any reference in a heading to an article shall be taken to include a reference to that

article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the finished article.'' Additionally, EN 2(a) defines the term ''blanks'' as ''an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part. Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as 'blanks.' ''

Petitioner argues that steel special profiles do not have the ''essential character'' of forklift truck parts as they are specified in their own heading, require extensive further manufacturing after importation, the post-importation manufacturing significantly alters the original shape and outline, each profile may be cut into different shapes, and the products are recognized and sold in the industry as steel profiles.

Analysis Used by CBP in Prior Rulings

Historically, as noted by Petitioner, CBP has classified special steel profiles in heading 7216, HTSUS. In NY J82683, dated April 18, 2003; NY N295670, dated April 27, 2018; and NY N295858, dated May 3, 2018, CBP classified hot extruded nonalloy steel profiles in C, G, J and S shapes, which had yet to be machined, assembled into a frame and painted after importation, in heading 7216, HTSUS. By contrast, in NY N293371, where CBP referred to the merchandise as ''incomplete mast rails and fingerbars,'' CBP did find the steel special profiles to be classified in heading 8431, HTSUS, as parts of forklifts, by application of GRI 2(a). Whether the merchandise at issue and subject to NY N293371 should be reclassified under heading 7216, HTSUS, consistent with the other cited rulings (NY J82683, NY N295670 and NY N295858), hinges on the substantiality of the operations performed after importation.

Section 232 Duties

The current column one, general rate of duty for products classified in either subheading discussed above is Free. However, on March 8, 2018, Presidential Proclamation 9705 (83 FR 11625) imposed additional tariffs and quotas on a number of steel products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent are reflected in Chapter 99, subheading 9903.80.01. Steel products of the United Kingdom and Germany of heading 7216.50.00, HTSUS, are currently subject to additional duties for steel of 25 percent under Subchapter III, Chapter 99, U.S. Note 16(b). Importers of such products must also identify subheading 9903.80.01, HTSUS, at entry. Products of the United Kingdom and Germany of subheading 8431.20.00, HTSUS, are currently not subject to Section 232 duties.

Comments

Pursuant to section 175.21, CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of certain steel special profiles, as well as all comments received in response to this notice, will be available for public inspection on the docket at *www.regulations.gov.* Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Dated: March 29, 2019.

Robert E. Perez,

Deputy Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2019–06481 Filed 4–2–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians Before Period of Deferred Enforced Departure Ends

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: On March 28, 2019, President Trump issued a memorandum to the Secretary of Homeland Security (Secretary), Kirstjen M. Nielsen, directing her to extend for certain, eligible Liberians, the 12-month deferred enforced departure (DED) wind-down period and to provide for continued work authorization through March 30, 2020, after which date the DED wind-down period will end. During the extension of the 12-month wind-down period of DED, affected individuals may remain in the United States. This Notice automatically extends DED-related employment authorization documents (EADs) that have a printed expiration date of March 31, 2019, for an additional 180 days through September 27, 2019, for eligible Liberians. This Notice also provides instructions for eligible Liberians on how to apply for an EAD for the full 12-month period of employment authorization, through March 30, 2020.

USCIS will issue new EADs with a March 30, 2020, expiration date to eligible Liberians who are covered by DED under the Presidential Memorandum of March 28, 2019, and who apply for a new EAD. DHS recognizes that current DED-eligible Liberians with EADs that expire on March 31, 2019, will not receive new EADs before such EADs expire. Accordingly, through this Notice, DHS also automatically extends the validity of DED-related EADs for 180 days, through September 27, 2019, and explains how Liberians covered under DED and their employers may determine which EADs are automatically extended and how this impacts the Employment Eligibility Verification (Form I–9), E-Verify, and SAVE processes.

DATES: The 12-month wind-down period for DED Liberia is extended through March 30, 2020. The 180-day automatic extension of DED-related EADs, as specified in this Notice, expires after September 27, 2019.

FOR FURTHER INFORMATION CONTACT:

- For further information on DED, including additional information on eligibility, please visit the USCIS DED web page at *http://www.uscis.gov/humanitarian/temporary-protected-status/deferred-enforced-departure.* You can find specific information about DED for Liberians by selecting ''DED Granted Country: Liberia'' from the menu on the left of the DED web page.
- You may also contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 20 Massachusetts Avenue NW, Washington, DC 20529–2060; or by phone at 800–375–5283.

• If you have additional questions about DED, please visit *http://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call the USCIS Contact Center at 1–800–375–5283 (TTY 1–800–767–1833).

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 1–800–375–5283 (TTY 800–767–1833).

• Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

DED—Deferred Enforced Departure
DHS—Department of Homeland Security
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

Presidential Memorandum Extending DED for Eligible Liberians

Pursuant to the President's constitutional authority to conduct the foreign relations of the United States, President Trump has concluded that foreign policy considerations warrant a further 12-month extension of the previously-announced 12-month wind-down period of DED for Liberians, through March 30, 2020.[1] The President concluded that the 12-month extension of the wind-down period is appropriate to provide Liberia's government with additional time to reintegrate its returning citizens. The President further authorized the 12-month extension of the DED wind-down period to preserve the status quo while Congress considers legislation to provide relief for Liberians covered by DED. The President accordingly directed that current, eligible Liberian DED beneficiaries who remain eligible for DED be provided with a 12-month extension of the wind-down period for DED. *See Presidential Memorandum on Extension of Deferred Enforced Departure for Liberians* (March 28, 2019), *available at https://www.whitehouse.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians/.* Note that DED only applies to individuals who have continuously resided in the United States since October 1, 2002, and who held Temporary Protected Status (TPS) on September 30, 2007, the date that a former TPS designation of Liberia terminated. The President also directed the Secretary to implement the necessary steps to authorize continued employment authorization for eligible Liberians for 12 months, through March 30, 2020.

Employment Authorization and Filing Requirements

How will I know if I am eligible for employment authorization under the Presidential Memorandum that extended for an additional 12 months the DED wind-down period for eligible Liberians?

The procedures for employment authorization in this Notice apply only to individuals who are Liberian nationals (and persons without nationality who last habitually resided in Liberia) who:

• Have continuously resided in the United States since October 1, 2002; and

• Are currently eligible Liberian DED beneficiaries.

The above eligibility criteria are described in the March 28, 2019, Presidential Memorandum extending the wind-down period for DED for Liberians.[2] Only individuals who held TPS on September 30, 2007, the date that a former TPS designation of Liberia terminated, are eligible for DED under this extension, provided they have continued to meet all other eligibility criteria established by the President. This DED extension does not include any individual:

• Who would be ineligible for TPS for the reasons set forth in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);

• Whose removal the Secretary determines is in the interest of the United States;

• Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

• Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States;

• Who was deported, excluded, or removed prior to March 28, 2019; or

• Who is subject to extradition.

What will I need to file if I am covered by DED and would like to have evidence of employment authorization?

If you are covered under DED for Liberia, and would like to maintain evidence of your employment authorization throughout the extension of the 12-month wind-down period of DED, you must apply for an EAD by filing an Application for Employment Authorization (Form I–765). USCIS will begin accepting these applications on April 3, 2019. Although this Notice automatically extends DED-related EADs that have a printed expiration date of March 31, 2019, for an additional 180 days through September 27, 2019, if you would like evidence of your continued employment authorization through March 30, 2020, you must file an Application for Employment Authorization (Form I–765) as soon as possible to avoid gaps in evidence of work authorization. Please carefully follow the Application for Employment Authorization (Form I–765) instructions when completing the application for an EAD. When filing the Application for Employment Authorization (Form I–765), you must:

• Indicate that you are eligible for DED by entering ''(a)(11)'' in response to Question 16 on the Application for Employment Authorization (Form I–765);

• Include a copy of your last Form I–797, Notice of Action (Approval Notice) showing that you were approved for TPS as of September 30, 2007, if such copy is available, and/or a copy of your EAD that has an expiration date of March 31, 2019, and states ''A–11'' under ''Category''; and

• Submit the fee for the Application for Employment Authorization (Form I–765).

The regulations require individuals covered under DED who request an EAD to pay the fee prescribed in 8 CFR 103.7 for the Application for Employment Authorization (Form I–765). *See also* 8 CFR 274a.12(a)(11) (employment authorization for DED-covered aliens); and 8 CFR 274a.13(a) (requirement to file EAD application if EAD desired). If you are unable to pay the fee, you may apply for an application fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal

[1] *See* Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians Before Period of Deferred Enforced Departure Ends, 83 FR 13767 (March 30, 2018).

[2] *See* Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Extension of Deferred Enforced Departure for Liberians (March 28, 2019), available at *https://www.whitehouse.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians/.*

letter requesting a fee waiver, and providing satisfactory supporting documentation.

Note: If you have an Application for Employment Authorization (Form I–765) that was still pending as of March 31, 2019, then you should not file the application again. If your pending EAD application is approved, you will receive an EAD valid through March 30, 2020.

How will I know if USCIS will need to obtain biometrics?

If biometrics are required to produce the secure EAD, USCIS will notify you and schedule you for an appointment at a USCIS Application Support Center.

Where do I submit my completed Application for Employment Authorization (Form I–765)?

Mail your completed Application for Employment Authorization (Form I–765) and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you would like to send your application by:	Then, mail your application to:
U.S. Postal Service	USCIS, Attn: DED Liberia, P.O. Box 6943, Chicago, IL 60680–6943.
A non-U.S. Postal Service courier	USCIS, Attn: DED Liberia, 131 S Dearborn, 3rd Floor, Chicago, IL 60603–5517.

Can I file my Application for Employment Authorization (Form I–765) electronically?

No. Electronic filing is not available when filing Application for Employment Authorization (Form I–765) based on DED.

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to individuals eligible for DED under the Presidential Memorandum at local offices.

Am I eligible to receive an automatic 180-day extension of my current EAD through September 27, 2019?

You are eligible for an automatic 180-day extension of your EAD if you are a national of Liberia (or a person having no nationality who last habitually resided in Liberia), you are currently covered by Liberian DED, and you are within the class of persons approved for DED by the President.

This automatic extension covers EADs (Forms I–766) bearing an expiration date of March 31, 2019. These EADs must also bear the notation ''A–11'' on the face of the card under ''Category.''

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find the Lists of Acceptable Documents on the third page of Form I–9 as well as the ''Acceptable Documents'' web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of your identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. An EAD is considered an acceptable document under List A.

You can find additional information about Form I–9 on the I–9 Central web page at *http://www.uscis.gov/I-9Central.*

If your EAD has an expiration date of March 31, 2019, and states ''A–11'' under ''Category,'' it has been extended automatically for 180 days consistent with the President's directive and the issuance of this **Federal Register** Notice. You may choose to present your EAD to your employer as proof of identity and employment authorization for Form I–9 through September 27, 2019. (See the subsection titled ''*How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?*'' for further information.) To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** Notice confirming the extension of your employment authorization through September 27, 2019.

What documentation may I show my employer if I am already employed but my current DED-related EAD is set to expire?

Even though your EAD has been automatically extended for 180 days, your employer is required by law to ask you about your continued employment authorization, and you will need to present your employer with evidence that you are still authorized to work. Once presented, you may correct your employment authorization expiration date in Section 1 and your employer should correct the EAD expiration date in Section 2 of Form I–9. (*See* the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*'' for further information.) You may show this **Federal Register** Notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through September 27, 2019. Your employer may need to re-inspect your automatically extended EAD to check the expiration date and Category code if your employer did not keep a copy of this EAD when you initially presented it.

The last day of the automatic EAD extension for eligible Liberians is September 27, 2019. Before you start work on September 28, 2019, your employer is required by law to reverify your employment authorization in Section 3 of Form I–9. At that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 Instructions to reverify your employment authorization. If your original Form I–9 was a previous verison, your employer must complete Section 3 of the current version of Form I–9, and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *http://www.uscis.gov/I-9Central* for the most current version of Form I–9.

Note that your employer may not specify which List A or List C document

you must present, and cannot reject an acceptable receipt.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Liberian citizenship?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 List of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request additional documentation that does not appear on the Form I–9 Lists of Acceptable Documents. Therefore, employers may not request proof of Liberian citizenship when completing Form I–9 for new hires, making corrections, or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such documents as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the *Note to Employees* section of this **Federal Register** Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after September 27, 2019, for purposes of employment authorization?

After September 27, 2019, employers may no longer accept the EADs that were issued under the previous DED extension of Liberia that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible individuals covered by DED who request them. These new EADs will have an expiration date of March 30, 2020, and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Lists of Acceptable Documents for Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job on or before September 27, 2019, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter September 27, 2019, as the ''expiration date''; and

b. Enter your Alien Registration Number/USCIS Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS Number is the same as your A-Number without the A prefix).

2. For Section 2, your employer should:

a. Determine if the EAD is automatically extended 180 days by ensuring it is in category A–11 and has a March 31, 2019, expiration date;

If it has been automatically extended, the employer should:

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write September 27, 2019, as the expiration date.

Before the start of work on September 28, 2019, employers are required by law to reverify the employee's employment authorization in Section 3 of Form I–9. If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9 and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *http://www.uscis.gov/I-9Central* for the most current version of Form I–9.

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a DED-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, your employer may need to reinspect your current EAD if your employer does not have a copy of the EAD on file. You may, and your employer should, correct your previously completed Form I–9 as follows:

1. For Section 1, you may:

a. Draw a line through the expiration date in Section 1;

b. Write September 27, 2019, above the previous date;

c. Write ''DED Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Determine if the EAD is automatically extended for 180 days by ensuring it shows category A–11 and has an expiration date of March 31, 2019.

If it has been automatically extended, employers should:

b. Draw a line through the expiration date written in Section 2;

c. Write September 27, 2019, above the previous date;

d. Write ''DED Ext.'' in the margin or Additional Information field in Section 2; and

e. Initial and date the correction in the margin or Additional Information field in Section 2.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either this Notice's automatic extension of EADs has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By September 28, 2019, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3. If your original Form I–9 was a previous version, your employer must complete Section 3 of the current version of Form I–9 and attach it to your previously completed Form I–9. Your employer can check the I–9 Central web page at *http://www.uscis.gov/I-9Central* for the most current version of Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for these employees by providing the employee's Alien Registration number (A-Number) or USCIS number from the document number field on Form I–9 in the document number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you have employees who provided a DED-related EAD with an expiration date that has been automatically extended by this Notice, you should dismiss the ''Work Authorization Documents Expiring'' case alert. Before this employee starts to work on September 28, 2019, you must reverify his or her employment authorization in Section 3 of Form I–9. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This

Federal Register Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) (formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov.* Calls are accepted in English, Spanish and many other languages upon request. Employees or applicants may also call the IER Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from Federal or State government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A case result of Final Nonconfirmation (FNC) is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY is at 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS website at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are covered by DED and/or show you are authorized to work based on DED. Examples are:

(1) Your current EAD;

(2) Your automatically extended EAD with a copy of this **Federal Register** Notice, providing an automatic extension of your currently expired or expiring EAD;

(3) A copy of your past Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS, coupled with a copy of the Presidential Memorandum extending DED for Liberians; and/or

(4) A print-out from the USCIS DED website that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an individual has DED, each agency's procedures govern whether they will accept an automatically extended DED-related EAD. You should present the agency with a copy of this **Federal Register** Notice showing the extension of your DED-related EAD in addition to your recent DED-related EAD with your A-Number. You should explain that SAVE will be able to verify the continuation of your DED using this information. You should ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response showing the DED. You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of your DED-related EAD. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *http://www.uscis.gov/save.*

Travel Authorization and Advance Parole

Individuals covered under DED who would like to travel outside of the United States must apply for and receive advance parole by filing an Application for Travel Document (Form I–131) with required fee before departing from the United States. *See* 8 CFR 223.2(a). DHS has the discretion to determine whether to grant advance parole and cannot guarantee advance parole in all cases. In addition, possession of an advance parole document does not guarantee that you will be permitted to re-enter the United States, as that is a decision that will be made by an immigration officer at the port of entry upon your return. If you

seek advance parole to travel to Liberia or to your country of last habitual residence outside the United States, you will risk being found ineligible to re-enter the United States under DED because the Presidential Memorandum excludes persons ''who have voluntarily returned to Liberia or their country of last habitual residence outside the United States.''

L. Francis Cissna,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 2019–06577 Filed 4–1–19; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Memorandum on Extension of Deferred Enforced Departure for Liberians

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

A ''Memorandum on Extension of Deferred Enforced Departure for Liberians'' was issued by the President on March 28, 2019. The memorandum extends the wind-down period for Liberian Deferred Enforced Departure beneficiaries by an additional 12 months, through March 30, 2020. The President authorized and directed the Secretary of Homeland Security to publish this memorandum in the **Federal Register**. The text of the memorandum is set out below.

L. Francis Cissna,

Director, U.S. Citizenship and Immigration Services.

Memorandum on Extension of Deferred Enforced Departure for Liberians

Since March 1991, certain Liberian nationals and persons without nationality who last habitually resided in Liberia (collectively, ''Liberians'') have been eligible for either Temporary Protected Status (TPS) or Deferred Enforced Departure (DED), allowing them to remain in the United States despite being otherwise removable.

In a memorandum dated March 27, 2018, I determined that, although conditions in Liberia had improved and did not warrant a further extension of DED, the foreign policy interests of the United States warranted affording an orderly transition (''wind-down'') period to Liberian DED beneficiaries. At that time, I determined that a 12-month wind-down period was appropriate; that wind-down period expires on March 31, 2019.

Upon further reflection and review, I have decided that it is in the foreign policy interest of the United States to extend the wind-down period for an additional 12 months, through March 30, 2020. The overall situation in West Africa remains concerning, and Liberia is an important regional partner for the United States. The reintegration of DED beneficiaries into Liberian civil and political life will be a complex task, and an unsuccessful transition could strain United States-Liberian relations and undermine Liberia's post-civil war strides toward democracy and political stability. Further, I understand that there are efforts underway by Members of Congress to provide relief for the small population of Liberian DED beneficiaries who remain in the United States. Extending the wind-down period will preserve the status quo while the Congress considers remedial legislation.

The relationship between the United States and Liberia is unique. Former African-American slaves were among those who founded the modern state of Liberia in 1847. Since that time, the United States has sought to honor, through a strong bilateral diplomatic partnership, the sacrifices of individuals who were determined to build a modern democracy in Africa with representative political institutions similar to those of the United States.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I hereby direct the Secretary of Homeland Security to take appropriate measures to accomplish the following:

(1) The termination of DED for all Liberian beneficiaries effective March 31, 2020;

(2) A continuation of the wind-down period through March 30, 2020, during which current Liberian DED beneficiaries who satisfy the description below may remain in the United States; and

(3) As part of that wind-down, continued authorization for employment through March 30, 2020, for current Liberian DED beneficiaries who satisfy the description below.

The 12-month wind-down period and 12-month continued authorization for employment shall apply to any current Liberian DED beneficiary who has continuously resided in the United States since October 1, 2002, but shall not apply to Liberians in the following categories:

(1) Individuals who are ineligible for TPS for reasons set forth in section 244(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B));

(2) Individuals whose removal the Secretary of Homeland Security determines to be in the interest of the United States;

(3) Individuals whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

(4) Individuals who have voluntarily returned to Liberia or their country of last habitual residence outside the United States;

(5) Individuals who were deported, excluded, or removed before the date of this memorandum; or

(6) Individuals who are subject to extradition.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the **Federal Register**.

DONALD J. TRUMP

[FR Doc. 2019–06576 Filed 4–1–19; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027342; PPWOCRADN0–PCU00RP14.R50000]

Native American Graves Protection and Repatriation Review Committee Finding Regarding Human Remains and Associated Funerary Objects Under the Control of the State of Missouri Department of Natural Resources, State Historic Preservation Office, Jefferson City, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is publishing this notice as part of its administrative responsibilities pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA or the Act). The recommendations, findings, and actions in this notice are advisory only and are not binding on any person. On October 17, 2018, the Native American Graves Protection and Repatriation Review Committee (Review Committee) found that there is not a reasonable basis to make a cultural affiliation determination for the human remains and associated funerary objects from the Clarksville Mound Group site and the Sac & Fox NAGPRA Confederacy at this time.

ADDRESSES: The meeting transcript containing the Review Committee proceedings and deliberation for this finding are available online at *www.nps.gov/nagpra/Review* or from the National NAGPRA Program upon request (*NAGPRA_Info@nps.gov*).

SUPPLEMENTARY INFORMATION: The recommendations, findings, and actions of the Review Committee are advisory only and not binding on any person. These advisory findings do not necessarily represent the views of the National Park Service or Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

At its October 17, 2018, public meeting in Washington, DC, the Review Committee heard a request, pursuant to 25 U.S.C. 3006(c)(3)(A), from the Missouri Department of Natural Resources, State Historic Preservation Office (SHPO). The SHPO requested that the Review Committee make a finding on the following question: Based on the information in the possession of the SHPO, are the identified human remains and associated funerary objects from the Clarksville Mound Group (site 23PI6), in Pike County, MO, culturally affiliated with the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa (hereafter referred to as the Sac & Fox NAGPRA Confederacy).

Human remains representing, at minimum, 29 individuals were removed from the Clarksville Mound Group (site 23PI6) along with two associated funerary objects—one lot of ancalusa shell beads and one Scallorn point. On July 30, 2013, the SHPO published a Notice of Inventory Completion in the **Federal Register** (78 FR 45960–45961) for the human remains and associated funerary objects removed from the Clarksville Mound Group site and determined that a relationship of shared group identity could be reasonably traced between the human remains and associated funerary objects and the Sac & Fox NAGPRA Confederacy.

On August 15, 2018, the SHPO requested that the Review Committee consider the information in the SHPO's possession related to the cultural affiliation determination of the Clarksville Mound Group site with the Sac & Fox NAGPRA Confederacy. The SHPO requested that the Review Committee advise the SHPO as to whether or not a relationship of shared group identity can be reasonably traced between the present-day Sac & Fox NAGPRA Confederacy and the human remains and associated funerary objects removed from the Clarksville Mound Group. The Designated Federal Officer for the Review Committee agreed to the request.

Finding of Fact: Five Review Committee members currently appointed by the Secretary of the Interior participated in the request to make a finding of fact related to cultural affiliation. By a vote of four to one, the Review Committee found that ''there is not a reasonable basis to make a cultural affiliation determination for the human remains and associated funerary objects from the Clarksville Mound Group site and the Sac & Fox NAGPRA Confederacy at this time.''

Dated: December 21, 2018.

Patrick Lyons,

Chair, Native American Graves Protection and Repatriation Review Committee.

Editorial note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

[FR Doc. 2019–06474 Filed 4–2–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1149]

Certain Semiconductor Devices, Integrated Circuits, and Consumer Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 15, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Innovative Foundry Technologies LLC of Portsmouth, New Hampshire. Letters supplementing the complaint were filed on March 1, 2019; March 8, 2019; and March 13, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, integrated circuits, and consumer products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,583,012 (''the '012 patent''); U.S. Patent No. 6,797,572 (''the '572 patent''); U.S. Patent No. 7,009,226 (''the '226 patent''); U.S. Patent No. 7,880,236 (''the '236 patent''); and U.S. Patent No. 9,373,548 (''the '548 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *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.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations or, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 20, 2019, Ordered that–

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–11 of the '012 patent; claims 1–7 of the '572 patent; claims 1–9 of the '226 patent; claims 1–18 of the '236 patent; and claims 1–3 of the '548 patent; and whether an industry in the United States exists or in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''(a) semiconductor devices made by TSMC at the 65 nanometer (nm) and smaller technology nodes (*e.g.,* 5–65 nm); (b) integrated circuits incorporating such semiconductor devices; and (c) consumer products containing the same, consisting of smartphones, and televisions'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Innovative Foundry Technologies LLC, 40 Pleasant Street, Suite 208, Portsmouth, NH 03801.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

BBK Communication Technology Co., Ltd., No. 255, Bubugao Avenue, Wusha, Chang'an Town, Dongguan, Guangdong 523850, China.

Vivo Mobile Communication Co., Ltd., No. 283, Bubu High Avenue, Wusha, Chang'an Town, Dongguan, Guangdong 523850, China.

OnePlus Technology (Shenzhen) Co., Ltd., 18F Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District, Shenzhen, Guangdong 518040, China.

Guangdong OPPO Mobile Telecommunications Co., Ltd., No. 18, Wusha Haibin Road, Wusha, Chang'an Town, Dongguan, Guangdong 523850, China.

Hisense Electric Co., Ltd., Hisense Tower, 17 Donghaixi Road, Quingdao 266071, China.

Hisense USA Corporation, 7310 McGinnis Ferry Road, Suwanee, GA 30024.

Hisense USA Multimedia R & D Center Inc., 7310 McGinnis Ferry Road, Suwanee, GA 30024.

TCL Corporation, No. 26, The Third Road, Zhongkai Avenue, Huizhou City, Guandong 516006, China.

TCL Communication, Inc., 25 Edelman, Suite 200, Irvine, CA 92618.

TTE Technology, Inc. (d/b/a TCL America), 108 West 13th Street Wilmington, DE 19801.

TCT Mobile (US) Inc., 25 Edelman, Suite 200, Irvine, CA 92618.

VIZIO, Inc., 39 Tesla, Irvine, CA 92618.

MediaTek Inc., No. 1, Dusing Road 1, Hsinchu Science Park, Hsinchu City 30078, Taiwan.

MediaTek USA Inc., 2840 Junction Avenue, San Jose, CA 95134.

Mstar Semiconductor, Inc., 4F–1, No. 26, Tai-Yuan St., ChuPei City, Hsinchu Hsien 30288, Taiwan.

Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, CA 92121.

Qualcomm Technologies, Inc., 5775 Morehouse Drive, San Diego, CA 92121.

Taiwan Semiconductor Manufacturing Company Limited, 8, Li Hsin Road 6, Hsinchu Science Park, Hsinchu City 30078 Taiwan.

TSMC North America, 2851 Junction Avenue, San Jose, CA 95134.

TSMC Technology, Inc., 2851 Junction Avenue, San Jose, CA 95134.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 21, 2019.

Katherine M. Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–06413 Filed 4–2–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1446 (Preliminary)]

Sodium Sulfate Anhydrous From Canada; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1446 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of sodium sulfate anhydrous from Canada, provided for in subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by May 13, 2019. The Commission's views must be transmitted to Commerce within five business days thereafter, or by May 20, 2019.

DATES: March 28, 2019.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on March 28, 2019, by Cooper Natural Resources, Inc., Fort Worth, Texas; Elementis Global LLC, East Windsor, New Jersey; and Searles Valley Minerals, Inc., Overland Park, Kansas.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 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 this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 9:30 a.m. on Thursday, April 18, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Tuesday, April 16, 2019. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 23, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2019.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2019–06453 Filed 4–2–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 1210–007]

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: United States International Trade Commission.

ACTION: Request for proposals to amend the International Harmonized System tariff nomenclature.

SUMMARY: The Commission is requesting proposals from interested persons and agencies to amend the International Harmonized Commodity Description and Coding System (Harmonized System or HS) in connection with the Seventh Review Cycle of the World Customs Organization (WCO), with a view to keeping the Harmonized System current with changes in technology and trade patterns. The proposals will be reviewed by the Commission, U.S. Customs and Border Protection (CBP), and the U.S. Department of Commerce, Bureau of the Census (Census), for potential submission by the U.S. Government to the WCO in Brussels, Belgium.

DATES: Suggested deadline for submissions: March 31, 2020.

This date allows adequate time for proposals to be considered for submission for the 2027 Harmonized System five-year revision cycle. Proposals must be submitted to the relevant committees of the WCO by no later than November 2022 to enable the WCO to approve all recommended amendments in June 2024. This timing will enable member countries to make such changes as are necessary in their national tariff schedules to meet the January 1, 2027 target date for implementation of amendments by countries using the HS.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Elkins, Office of Tariff Affairs and Trade Agreements (202–205–2253, fax 202–205–2616, *barbara.elkins@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Affairs (202–205–1819,

margaret.olaughlin@usitc.gov). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet website (*http://www.usitc.gov/*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Harmonized Tariff Schedule of the United States (HTS) was approved by Congress in the Omnibus Trade and Competitiveness Act of 1988, (Pub. L. 100-418; 19 U.S.C. 3007) (1988 Act) and became effective on January 1, 1989. The HTS incorporates within its legal structure the rules of interpretation, legal notes, and nomenclature categories of the international HS, and provides additional product provisions for U.S. rate of duty and statistical purposes. Because it was clear that the HS would need to be updated over time, Congress enacted section 1205 (19 U.S.C. 3005) of the 1988 Act to provide for Commission investigations and recommendations to the President pertaining to specific types of changes to the HTS. Pursuant to the authority of section 1205(a), the Commission conducts investigations to recommend to the President changes to the HTS that result from the WCO's five-year review cycles.

Congress also established a process for U.S. involvement in the work of the WCO in administering and updating the HS. Section 1210 of the 1988 Act (19 U.S.C. 3010) designates the Commission, the U.S. Department of the Treasury, and the U.S. Department of Commerce, subject to the policy direction of the Office of U.S. Trade Representative (USTR), as the principal agencies responsible for formulating U.S. Government positions on technical and procedural issues and in representing the U.S. Government in activities of the WCO relating to the HS. The USTR subsequently designated the Commission to lead the U.S. delegation to the HS Review Sub-Committee (RSC), which is responsible for considering amendments to the HS in order to keep the HS current with changes in technology and patterns of international trade (see 53 FR 45646, Nov. 10, 1988). Commission staff also participates in the U.S. delegations to the Harmonized System Committee (HSC), the parent body of the RSC, as well as the Scientific Sub-Committee (SSC) that provides scientific analysis and recommendations to the HSC.

The HS was adopted internationally by means of a WCO convention, which recognizes that the HS should be kept up to date in light of changes in technology and patterns of international trade. The HS nomenclature structure, now used by nearly all countries in their national tariff schedules, provides a uniform basis for classifying and reporting goods for tariff and statistical purposes. The HS structure includes the broadest descriptive product categories reflected in the HTS, thereby providing the general rules for the interpretation of the nomenclature, section and chapter titles, section and chapter legal notes, and the 4-digit headings and 6-digit subheadings covering all goods in international trade. The HTS also includes additional U.S. rules of interpretation and notes, 8-digit subheadings establishing rates of duty, and 10-digit non-legal statistical provisions, as well as special duty provisions in chapters 98 and 99 and several appendices. These national legal and statistical provisions and the final two chapters are not part of the international HS review process for which proposals are being requested, and thus no requests for changes in U.S. tariff rate lines or rates of duty will be acted upon.

By way of further background, shortly after implementation of the HS in 1988, the RSC began a series of systematic reviews of the HS. Reviews result in WCO recommendations to those countries using the HS, so that they have a basis for updating their national tariffs to reflect international amendments. In the current review cycle, members' proposals to amend the HS will be examined, and the RSC will forward its final proposed amendments to the HSC in November 2023, so the HSC can agree upon the changes to be included in the WCO recommendation to countries using the HS, that is scheduled to be issued in June 2024. Members then undertake domestic legal processes, similar to the U.S. process in section 1205, with the targeted implementation date for this set of amendments by all countries using the HS being January 1, 2027.

Through this notice the Commission is seeking proposals to amend the HS, specifically the 4- and 6-digit product categories and associated legal notes. Proposals received will be made a part of the Commission's record keeping system and available for public inspection (with the exception of any confidential business information) through the Commission's record files and through the Commission's electronic docket (EDIS).

An up-to-date copy of the HTS, which incorporates the international HS in its overall structure, can be found on the Commission's website (*http://www.usitc.gov/tata/hts/bychapter/index.htm*). Information concerning locations where copies in print or on CD can be found at the following link, *https://www.govinfo.gov/app/search* or by contacting GPO Access at the Government Printing Office (866–512–1800).

Request for Proposals: The Commission is seeking proposals for specific modifications to the international Harmonized System (section and chapter notes, and the texts of 4-digit headings and 6-digit subheadings) that would describe new products or technologies, modify or eliminate unclear or obsolete categories, or otherwise advance the goals set out by the HS Convention. No proposals for changes to U.S. national-level provisions (including Additional U.S. Notes, 8-digit subheadings, 10-digit statistical annotations, and rates of duty) will be considered by the Commission as part of this review. Interested parties, associations, and government agencies should submit specific language for proposed amendments to the HS, together with appropriate descriptive comments and, to the extent available, relevant trade data. The implementation of changes in the international HS by the United States is intended to be tariff-neutral.

As part of this review, the Commission particularly invites proposals concerning the following matters:

—The deletion of HS headings or subheadings with low trade volume;
—The creation of separate 4-digit headings or 6-digit subheadings to identify types of products that are important in international trade but are not adequately classified;
—The simplification of the HS, whether by the modification of provisions for greater clarity or the elimination of provisions that are difficult to administer; and/or
—The suggestion of other changes that would improve the classification of products, especially those being exported from the United States, or assist in the administration of the HS and the more uniform classification of goods internationally.

Proposals received in connection with this notice will be considered by the interagency U.S. delegation to the RSC. When the WCO later makes recommendations as part of the Seventh Review Cycle, the Commission will prepare a report setting out the needed changes in the HTS that would reflect the HS changes while maintaining existing duty treatment. The

Commission will publish notice and seek the views of interested parties in connection with this work, resulting in final recommendations to the President in accordance with section 1205 of the 1988 Act.

This notice does not seek proposals for changes to the HS Explanatory Notes, which are maintained by the WCO and are reviewed separately. However, requests for changes to current Explanatory Notes (not arising from potential 2027 legal amendments to the HS) may be sent by a WCO member government directly to the HSC at any time. Government agencies and private sector parties interested in such action should contact the Commission (see contacts above) or the following CBP officials: Myles B. Harmon, Director, Commercial & Trade Facilitation Division, 202–325–0276, or Parisa Ghazi, Acting Branch Chief, FTM Branch, 202–325–0272.

Written Submissions: Interested persons and agencies are invited to submit written proposals, which should be addressed to the Secretary to the Commission and received no later than March 31, 2020. Although submissions will be accepted after this date, it is recommended that proposals be submitted as soon as possible to ensure full consideration in the seventh HS review cycle. Submissions should be marked with a reference to ''Docket No. 1210–007''.

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the Commission's rules require the filing of all submissions with the Secretary electronically, (see Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Submission will preferably be public, but in the event that confidential treatment of a document is requested, a non-confidential version must also be filed (see the following paragraph for further information regarding confidential business information). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets.

All written submissions, except for confidential business information, will be made available for inspection by interested parties. Confidential business information received in the proposals may be made available to Customs and Census during the examination of these proposals. The Commission will not otherwise publish or release any confidential business information received, nor release it to other government agencies or other persons.

By order of the Commission.

Issued: March 28, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–06540 Filed 4–2–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection; Comments Requested: USMS Promotional Vendor Registration Website

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), 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 June 3, 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 additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646.

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):* New collection.

2. *The Title of the Form/Collection:* USMS Promotional Vendor Registration website.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): [None]

Component: U.S. Marshals Service, 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 (if applicable): [None]

Abstract: This website will allow vendors to request to be registered as a vendor of USMS promotional items. They will be asked to provide their business's contact information as well as to specify the item(s) they wish to produce bearing the USMS seal or badge design. Vendors must agree to certain restrictions in the distribution of items bearing the USMS seal or badge design, such as adhering to the requirements set forth in 18 U.S.C. 709, *False advertising or misuse of names to indicate Federal agency.* Approved vendors will be asked to maintain their profile in order to keep the database up-to-date and to recertify their profile is correct every two years.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 150 respondents will utilize the form, and it will take each respondent approximately 30 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

75 hours, which is equal to (150 (total # of annual responses) * .5 (30 mins).

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 28, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–06392 Filed 4–2–19; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0147]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, with Change, of a Previously Approved Collection for Which Approval Has Expired: Census of State and Federal Adult Correctional Facilities

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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. The proposed information collection was previously published in the **Federal Register** Volume 83, Number 238, page 63909–63911, on December 12, 2018, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received two comments. Responses to these comments will be included in the final clearance package submitted to OMB.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 3, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laura Maruschak, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *laura.maruschak@usdoj.gov;* telephone: 202–307–5986).

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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* Census of State and Federal Adult Correctional Facilities.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for this collection for confinement facilities is CJ–43A and for community-based facilities CJ–43B. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State departments of corrections (DOCs) and the Federal Bureau of Prisons (BOP). *Others:* Various local authorities and private entities for which primary respondents cannot provide facility-level data.

The affected public consists of approximately 451 respondents, including 51 central state DOC and BOP reporters and an estimated 400 reporters for locally- or privately-operated facilities primarily housing prisoners for state or BOP authorities. BJS will attempt to identify central reporters for private facilities operated by the same company. If successful, the overall number of respondents will be reduced.

The Census of State and Federal Adult Correctional Facilities (CCF) is part of the larger Bureau of Justice Statistics' (BJS) portfolio of establishment surveys that inform the nation on the characteristics of adult correctional facilities and persons sentenced to state and federal prisons. The CCF collects data at the facility level. Data obtained are intended to describe the characteristics of confinement and community-based adult correctional facilities that are (1) operated by state and BOP authorities or (2) operated by local authorities or private entities under contract to state or BOP authorities. The data collected inform issues related to the operations of facilities and the conditions of confinement, including facility capacity and crowding, safety and security within prisons, staff workload, overall facility function, programming, work assignments, and special housing. All data are submitted on a voluntary basis. Deviating from the one form administered in 2005, the 2019 CCF will consist of two forms– one for confinement facilities and one for community-based facilities. Consistent with the most recent iteration of the CCF in 2005, BJS plans to collect the following data on each confinement facility eligible for the census with the reference date of June 30, 2019:

- Type of authority operating facility
- Whether the facility is authorized to house males, females, or both males and females
- Physical-security level of the facility
- Functions of the facility
- Whether or not the facility has a designated geriatric or hospice unit
- Percentage of prisoners permitted to leave the facility unaccompanied
- Rated or design capacity of the facility
- Whether or not the facility operated under a state or federal court order or consent decree that limited the number of prisoners it could house
- Whether or not the facility operated under a state or federal court order or consent decree for specific conditions of confinement
- Year that state or federal court order or consent decree took effect
- Number of prisoners on the reference date
- Number of male and female prisoners under the age of 18 on the reference date
- Number of prisoners by racial category on the reference date

• Number of prisoners by custody-security level on the reference date
• Number of prisoners by maximum sentence length (more than 1 year and 1 year or less) on the reference date
• Number of prisoners who were not U.S. citizens on the reference date
• Number of prisoners housed in protective custody, administrative segregation, segregated for disciplinary reasons, or other restrictive housing on the reference date
• Number of prisoners held for federal, state, local, and tribal authorities on the reference date
• Payroll and non-payroll, full-time and part-time staff, employed by the facility on the reference date
• Total number of payroll and non-payroll staff by sex on the reference date
• Number of male and female security staff employed by the facility on the reference date
• Number of security staff by racial category on the reference date
• Number of misconduct/disciplinary reports filed on prisoners over a one-year period
• Number of assaults against facility staff by prisoners reported over a one-year period
• Number of prisoner assaults by other prisoners reported over a one-year period
• Number of disturbances that occurred at the facility over a one-year period
• Number of escapes by prisoners that occurred at the facility over a one-year period
• Number of walkaways by prisoners that occurred at the facility over a one-year period
• Types of work assignments available to prisoners on the reference date
• Types of educational programs available to prisoners on the reference date
• Types of counseling or special programs available to prisoners on the reference date

BJS is proposing to add the following items, all of which are likely available from the same databases as existing data elements and should pose minimal additional burden to the respondents, while enhancing BJS's ability to characterize the corrections system and populations it serves:

• Whether the facility is administratively linked to other facilities and if they are, names of other facilities
• Whether or not the facility has a housing unit specifically designated for veterans
• Number of prisoners being held in restrictive housing on reference date
• Number of security staff on average at facility by day shift, night shift, and overnight shift
• Number of shared security staff with other administratively-linked facilities
• Number of prisoner assaults by other prisoners resulting in serious injury and without serious injury over a one-year period

Finally, BJS is proposing to remove the following items, based on high burden, low utilization, duplication of other BJS data collection efforts, and/or low response rates in 2005:

• Year facility was constructed
• Plans to renovate or close the facility during the next three years
• Net effect of planned changes in terms of bed capacity of the facility
• Number of prisoners housed in a geriatric unit on the reference date
• Number of confined prisoners sentenced to death on the reference date
• Average daily population of male and female prisoners over a one-year period
• Per diem fees paid to the facility for housing for federal, state, or local authorities
• Number of male and female administrators, clerical and maintenance, educational, professional, and technical staff employed by the facility on the reference date
• Number of full-time and part-time payroll staff by racial category on the reference date
• Number of part-time security staff by racial category on the reference date
• Number of facility staff deaths resulting from assaults by prisoners for a one-year period
• Number of disturbances by type (major or other) that occurred at the facility over a one-year period
• Number of prisoners at the facility that had work assignments on the reference date
• Whether the facility operates a work release program, and if so, number of prisoners participating in the program on the reference date

As mentioned above, the CCF will consist of two data collection instruments. Above described the confinement facility collection. The community-based facility form is consistent with the confinement form, but the number of data elements collected is reduced. The following will be collected from each community-based correctional facility eligible for the census with the reference date of June 30, 2019:

• Functions of the facility
• Percentage of prisoners regularly permitted to leave the facility unaccompanied
• Whether the facility is administratively linked to other facilities and if they are, names of other facilities
• Type of authority operating facility
• Whether the facility is authorized to house males, females, or both males and females
• Number of prisoners on the reference date
• Number of male and female prisoners under the age of 18 on the reference date
• Number of prisoners by racial category on the reference date
• Number of prisoners who were not U.S. citizens on the reference date
• Number of prisoners held for federal, state, local, and tribal authorities on the reference date
• Number of walkaways by prisoners that occurred at the facility over a one-year period
• Types of educational programs available to prisoners on the reference date
• Types of counseling or special programs available to prisoners on the reference date

BJS uses the information gathered in CCF in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 451 respondents reporting for approximately 2,000 facilities—1,400 confinement and 600 community-based. It is estimated to take 2 hours and 45 minutes to complete each confinement facility census form and 45 minutes for each community-based correctional facility census form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 4,413 total burden hours associated with this collection, fewer than in 2005. The 4,413 includes the time associated for reviewing instructions, searching existing data sources, gathering necessary data, completing and reviewing this form, and an additional 113 burden hours for data quality follow up. While there is an increase of approximately 300 facilities anticipated to be in scope for the 2019 collection, the decrease in burden hours is attributed to the implementation of a short form for the estimated 600 community-based facilities and the decrease in the number of questions being asked in the longer confinement facility form.

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.405B, Washington, DC 20530.

Dated: March 29, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–06437 Filed 4–2–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Secretary's Order 01–2019—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board

1. *Purpose.* To delegate authority and assign responsibility to the Administrative Review Board, define its composition, and describe its functions.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Background.* The Secretary of Labor (''Secretary'') has the authority and responsibility to decide certain appeals from administrative decisions. The Secretary created the Administrative Review Board (''Board'' or ''ARB'') in Secretary's Order 02–96, which delegated authority and assigned responsibilities to the Board. Secretary's Order 01–2002 delegated this authority and assigned responsibility to the ARB, defined and expanded its composition, clarified ARB procedural authorities, and codified the location of the ARB in the Department's organizational structure. Secretary's Order 01–2010, then, created and designated a Vice-Chair to maintain and operate the Board during a Chair's absence or vacancy. Additionally, Secretary's Order 01–2010 delegated the responsibility for the operational management of the Board and its affairs to the newly created Vice-Chair. Secretary's Order 02–2012 provided updates to the delegation of authority and assignment of responsibilities laid out in the previous orders. This order will provide updates to the term of membership.

4. *Directives Affected.* Secretary's Order 02–2012—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board is hereby canceled. Any Secretary's Order or other DOL document (including policies and guidance) that references Secretary's Order 02–2012 is deemed to refer to this Order instead. This Order does not affect the authorities and responsibilities assigned by Secretary's Order 05–2018—Procedures for Appointment of Individuals to Department of Labor Appellate Boards.

5. *Delegation of Authority and Assignment of Responsibilities.* The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below, including, but not limited to, the issuance of final agency decisions. The Board shall report to the Secretary of Labor through the Deputy Secretary of Labor.

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges (''ALJs''), under the following:

1. The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*; any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* (except matters pertaining to safety); the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

2. The McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 6701 *et seq.*; the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

b. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

1. Age Discrimination Act of 1975, 42 U.S.C. 6103;

2. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–l; 29 CFR part 31;

3. Civil Service Reform Act of 1978, 5 U.S.C. 7120; 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, and 458.93;

4. Clean Air Act, 42 U.S.C. 7622; 29 CFR part 24;

5. Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 CFR part 24;

6. Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, and 458.93;

7. Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. 5567, Public Law 111–203;

8. Consumer Product Safety Improvement Act of 2008, 15 U.S.C. 2087; 29 CFR part 1983;

9. Title IX of the Education Amendments of 1972, 20 U.S.C. 1682; 29 CFR part 36;

10. Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005(a); 29 CFR part 801, subpart E;

11. Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 CFR part 24;

12. Equal Access to Justice Act, 5 U.S.C. 504; 29 CFR part 16;

13. Executive Order No. 11246, as amended, 3 CFR 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 CFR parts 60–1 and 60–30;

14. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 CFR part 531, §§ 531.4, 531.5;

15. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 CFR part 530, subpart E;

16. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c) 29 CFR part 525, § 525.22;

17. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 CFR part 580;

18. Fair Labor Standards Act of 1938, as amended by the Affordable Care Act, 29 U.S.C. 218C, Public Law 111–148, 1558;

19. Federal Railroad Safety Act, 49 U.S.C. 20109; 29 CFR part 1982;

20. Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);

21. Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 CFR part 617;

22. Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR part 24;

23. Foreign Service Act of 1980, 22 U.S.C. 4117; 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, 458.92, and 458.93;

24. Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart E;

25. Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart M;

26. Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 20 CFR part 655, subpart I;

27. Immigration and Nationality Act, as amended, 8 U.S.C. 1184(c)(14), 20 CFR part 655, subpart A, 29 CFR part 503, subpart C;

28. Immigration and Nationality Act, as amended, 8 U.S.C. 1188(b)(2), 20 CFR part 655, subpart A, 29 CFR part 503, subpart C;

29. Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c) and (d); 20 CFR part 655, subpart G;

30. Immigration and Nationality Act, as amended, 8 U.S.C. 1188(g)(2); 29 CFR part 501, subpart C;

31. Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(h); 29 CFR part 417, sections 417.6, 417.7, 417.9(c), 417.13, 417.14, and 417.15;

32. Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 CFR part 702;

33. Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 CFR part 500, subpart F;

34. Motor Vehicle and Highway Safety Improvement Act of 2012, Section 31307 of the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. 30171;

35. National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30;

36. National Transit Systems Security Act of 2007, 6 U.S.C. 1142; 29 CFR part 1982;

37. Notification of Employee Rights Under Federal Labor Laws, 29 CFR part 471;

38. Older Americans Senior Community Service Employment Program, 42 U.S.C. 3056, 20 CFR 641.900;

39. Part B of the Black Lung Benefits Act, 30 U.S.C. 921—924; Section 3(d)(3) of the Black Lung Consolidation of Administrative Responsibility Act (2002); 20 CFR part 410 (2011);

40. Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; 29 CFR part 1981;

41. Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 CFR part 22;

42. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5177(a) and 5189a; 20 CFR part 625;

43. Section 423(d)(1) of the Black Lung Benefits Act, 30 U.S.C. 933(d)(1); 20 CFR part 726;

44. Section 428 of the Black Lung Benefits Act, 30 U.S.C. 938;

45. Seaman's Protection Act, 46 U.S.C. 2114;

46. Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353, 21 U.S.C. 399d;

47. Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 CFR part 60–741, subpart B;

48. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 CFR part 32;

49. Safe Drinking Water Act, 42 U.S.C. 300j–9(i); 29 CFR part 24;

50. Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A, as amended by Sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 29 CFR part 1980;

51. Single Audit Act of 1984, as amended, 31 U.S.C. 7501 *et seq.*; OMB Circular No. A–133, as amended; 29 CFR part 96;

52. Social Security Act, 42 U.S.C. 503; 20 CFR parts 601 and 602;

53. Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24;

54. Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978;

55. Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24;

56. Trade Act of 1974, as amended, 19 U.S.C. 2101–2321; 20 CFR part 617;

57. Unemployment Compensation for Federal Civilian Employees Program, 5 U.S.C. 8501–8508; 20 CFR part 609;

58. Unemployment Compensation for Ex-Service Members Program, 5 U.S.C. 8521–8525; 20 CFR part 614;

59. Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 CFR part 60–250, subpart B, and Part 60–300, subpart B;

60. Wagner-Peyser Act, as amended, 29 U.S.C. 49; 20 CFR part 658;

61. Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203;

62. Welfare to Work Act, 20 CFR 645.800(c);

63. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979;

64. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2936; 20 CFR 667.830;

65. Workforce Innovation and Opportunity Act, 29 U.S.C § 3246; 20 CFR 683.830;

66. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2938; 29 CFR part 37 (see 37.110–112);

67. Workforce Innovation and Opportunity Act, 29 U.S.C. 3248; 29 CFR part 38 (see 38.112); and

68. Any laws or regulation subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended decisions, issued by ALJs, and any Federal law that extends or supplements unemployment compensation and provides for final decisions by the Secretary of Labor.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 5(a), 5(b), and 5(c) of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent. The Board's authority includes the discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.

6. *Composition and Panel Configuration*

a. The Board shall consist of a maximum of five Members, one of whom the Secretary shall designate as Chair, and a second of whom the Secretary shall designate as Vice-Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

b. Except as provided in Section 6(c), the Board shall sit, hear cases, render decisions, and perform all other related functions in panels of two or three Members, as may be assigned by the Chair, unless the Chair specifically directs that an appeal or review will be decided by the full Board.

c. Except as otherwise provided by law or duly promulgated regulation (see, *e.g.,* 29 CFR parts 7 and 8), if the petitioner(s) and the respondent(s) (or the appellant(s) and the appellees(s)) consent to disposition by a single Member, the Chair may determine that the decision shall be by a single Member. Upon an affirmative determination, the Chair of the Board shall, in his or her discretion, designate himself, herself, or any other Member of the Board to decide such an appeal under Section 8.

d. The Vice-Chair shall preside at meetings in the absence of the Chair. In the event of the vacancy of the Chair's position, the Vice-Chair shall assume all of the Chair's authority and shall act as Chair.

e. The Vice-Chair shall be responsible for the operational management of the Board and its affairs.

7. *Terms of the Members*

a. Members of the Board shall be appointed for a term of four years or less. Term of service may be extended, if deemed necessary by the Secretary, to promote the efficiency of service, and will be considered on a case-by-case basis.

b. Appointment of a Member of the Board to a term not to exceed a specified time period shall not affect the authority of the Secretary to remove any Member at any time prior to the completion of the four-year term, consistent with applicable law.

c. Vacancies in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Board.

8. *Voting.* A petition for review may be granted upon the affirmative vote of one Member, except where otherwise provided by law or regulation. A decision in any matter, including the issuance of any procedural rules, shall be by a majority vote, except as provided in Section 6(c).

9. *Location of Board Proceedings.* The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

10. *Rules of Practice and Procedure.* The Board shall prescribe such rules of practice and procedure, as it deems necessary or appropriate, for the conduct of its proceedings. The rules (1) which are prescribed as of the date of this Order in 29 CFR part 7 and part 8 with respect to Sections 5(a) and 5(b), respectively, of this Order and (2) which apply as of the date of this Order to appeals and review described in Section 5(c) of this Order shall, until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 5 of this Order.

11. *Departmental Counsel.* The Solicitor of Labor shall have the responsibility for representing the Secretary, the Deputy Secretary, and other officials of the Department and the Board in any administrative or judicial proceedings involving agency decisions issued pursuant to this Order, including representing officials of the Department before the Board. In addition, the Solicitor of Labor shall have the responsibility for providing legal advice to the Secretary, the Deputy Secretary, and other officials of the Department with respect to decisions covered by this Order, as well as the implementation and administration of this Order. The Solicitor of Labor may also provide legal advice and assistance to the Chair and/or Vice-Chair of the Board, as appropriate.

12. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: February 15, 2019.

R. Alexander Acosta,

Secretary of Labor.

[FR Doc. 2019–06447 Filed 4–2–19; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Vacancy Posting for a Member of the Administrative Review Board

Summary of Duties: A Member of the Administrative Review Board (the Board) serves in all matters of the Board as assigned, including policy decisions and technology proposals. The incumbent participates in rendering decisions of the Board. Each decision is set forth in a written opinion which sets forth the basis of the decision. The Member of the Board analyzes and evaluates the legal and factual aspects of each case and conducts necessary research. Research includes examination of laws, regulations, and procedures as well as prior Board decisions on whistleblower, immigration, child labor, employment discrimination, federal construction, and service contract cases made under other jurisdiction or general statutory or common law.

Appointment Type: Excepted—The term of appointment is for four years or less and may be extended.

Qualifications: The applicant should be well versed in law and the appeals process, as well as have the ability to interpret regulations and to come to a consensus to determine an overall appeals determination with Members of the Board. Applicants must possess a J.D. and are required to be active members of the Bar in any US State or US Territory Court under the U.S. Constitution.

To Be Considered: Applicants must provide a detailed resume containing a demonstrated ability to perform as a Member of the Board.

Closing Date: Resumes must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by 11:59 p.m. EDT on May 5, 2019. Resumes must be submitted to: *sylvia.john@dol.gov* or mail to: U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Office of Executive Resources, Room N2453, Washington, DC 20210, phone: 774–365–6851. This is not a toll-free number.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2019–06446 Filed 4–2–19; 8:45 am]

BILLING CODE 4510–04–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME AND DATE: 2:00 p.m., Tuesday, April 16, 2019.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO

Agenda

I. Call to Order
II. Approval of Minutes
III. Executive Session: Report from CEO
IV. Action Item FY2019 Final Budget
V. Action Item Delegation of Authority
VI. Action Item Audio Visual/Computer Equipment
VII. Management Program Background and Updates
VIII. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2019–06578 Filed 4–1–19; 4:15 pm]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–219; MC2019–110 and CP2019–119; MC2019–111 and CP2019–120; MC2019–112 and CP2019–121; MC2019–113 and CP2019–122]

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:* April 5, 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).:* CP2017–219; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 22, Filed Under Seal; *Filing Acceptance Date:* March 28, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 5, 2019.
2. *Docket No(s).:* MC2019–110 and CP2019–119; *Filing Title:* USPS Request to Add Priority Contract 516 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* April 5, 2019.
3. *Docket No(s).:* MC2019–111 and CP2019–120; *Filing Title:* USPS Request to Add Priority Mail Contract 517 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* April 5, 2019.
4. *Docket No(s).:* MC2019–112 and CP2019–121; *Filing Title:* USPS Request to Add Priority Mail Express Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 5, 2019.
5. *Docket No(s).:* MC2019–113 and CP2019–122; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 57 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 5, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–06439 Filed 4–2–19; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85441; File No. SR–OCC–2019–003]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Require That an Actionable Identifier Be Included on Customer and Non-Customer Securities Options Trades Other Than Market Maker Trades

March 28, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2019, the Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend Rule 401 to require that an ''Actionable Identifier'' be included on all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Maker trades. OCC also proposes to make certain minor, non-substantive amendments to Rule 401 to fix an omission and certain references in the rule. The proposed changes to OCC's Rules can be found in Exhibit 5 to the filing. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Clearing Member Trade Assignment (''CMTA'') process at OCC allows a Clearing Member that executed a securities options trade (*i.e.,* the Executing Clearing Member) to send the trade directly through OCC to another Clearing Member for clearance and settlement (*i.e.,* the Carrying Clearing Member).[4] In particular, under the CMTA process, an Executing Clearing Member and a Carrying Clearing Member can agree to have securities options trades for customers and non-customers effected by the Executing Clearing Member sent directly through OCC to the Carrying Clearing Member's omnibus accounts at OCC for clearance and settlement.[5] For some time, Clearing Members have been concerned with the risks they face in handling trades they cannot timely identify in connection with the CMTA process. Clearing Members have reached out to OCC to help them address these risks.

In response to these concerns, OCC proposes to amend Rule 401 to require that an ''Actionable Identifier,'' as described below, be included on all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Makers trades.[6] OCC believes that having an Actionable Identifier on customer and non-customer trades (other than Market-Maker trades) will allow Clearing Members to more timely identify trades transmitted as part of a CMTA arrangement as well trades transmitted through the ''give-up'' process at exchanges, which is described below.

OCC also proposes to make certain minor, non-substantive amendments to Rule 401 to fix an omission and certain references in the rule. These changes to the rule are described at the end of this section.

Background on CMTA and Give-Up Trade Processes

Governed by Rule 407, the CMTA process was created to allow an Executing Clearing Member to seamlessly transfer trades to individual customer and non-customer accounts at a Carrying Clearing Member in a timely fashion.[7] For instance, the process allows a customer to hold its positions with its preferred prime broker (*i.e.,* Carrying Clearing Member), but provides the customer with flexibility to use specialized execution brokers (*e.g.,* Executing Clearing Members) that offer cheaper or faster executions of trades. An example of such an arrangement is as follows:

Customer A maintains a prime brokerage account with Carrying Clearing Member that holds all the Customer's securities positions (equities, options, etc.). Customer A wishes to trade an option, but would prefer using Executing Clearing Member to execute the trade due to its trading expertise and cost. Customer A instructs Executing Clearing Member to buy the option and ''CMTA'' the trade to Customer A's prime brokerage account at Carrying Clearing Member. Carrying Clearing Member and Executing Clearing Member have a CMTA arrangement at OCC. When Executing Clearing Member executes the trade, it includes data on the trade which instructs OCC to settle the trade in Carrying Clearing Member's omnibus customer account at OCC once the trade is received by OCC.

The primary concern raised by Carrying Clearing Members is that they could receive customer trades through the CMTA process that they may not recognize in a timely manner because the trades do not include information that allows them to quickly identify the correct customer account at the Carrying Clearing Member or that the trade should have been sent to another Carrying Clearing Member. If the Carrying Clearing Member is unable to timely identify the correct customer account for the trade or that the trade should have been sent to another Carrying Clearing Member, it ends up holding the position overnight and is responsible for the margin for the position as well as possible assignment risk related to the position. Carrying Clearing Members are concerned about the potential risks they face in such a situation.

Executing Clearing Members have expressed concern that they are not at fault in such a situation, noting that sometimes the orders they execute do not include individual customer or non-customer account information. They note that this could happen, for instance, when an order is sent to them by an Introducing Broker who wishes to keep the customer anonymous for fear of losing the customer business.[8] This also could happen when a trading desk at a Clearing Member Group with multiple trading desks uses an Executing Clearing Member to execute a non-customer (*i.e.,* proprietary) trade but does not include an account identifier on the trade that would allow staff at the Carrying Clearing Member within the Clearing Member Group to identify which trading desk executed the trade.[9] Nonetheless, Executing Clearing Members recognize and acknowledge that the CMTA process could be further streamlined to make it more efficient.

In addition, OCC understands that Clearing Members are concerned about the length of time it can take them to process trades they receive through the ''give-up'' process at exchanges.[10] For

[4] *See* OCC Rule 407. An ''Executing Clearing Member'' is defined in Article I, Section 1.E.(12) of the By-Laws as ''a Clearing Member, on its own behalf or as the Clearing Member of an Introducing Broker that has been authorized by a Carrying Clearing Member to direct confirmed trades to be transferred to a designated account of the Carrying Clearing Member pursuant to such Clearing Members' CMTA arrangement.'' A ''Carrying Clearing Member'' is defined in Article I, Section 1.C.(12) of the By-Laws as ''a Clearing Member that has authorized an Executing Clearing Member to direct the transfer of a confirmed trade to a designated account of such Carrying Clearing Member pursuant to a CMTA arrangement.''

[5] The term ''customer'' is defined in Article I, Section 1.C. (37) of the By-Laws with regard to listed options as ''a person having a securities account at a broker or dealer other than a non-customer of such broker or dealer.'' The term ''non-customer'' is defined in Article I, Section 1.N.(1) of the By-Laws effectively as ''a person that is not a customer of a broker or dealer as defined in Rules 8c-1 and 15c2–1 under the Securities Exchange Act of 1934,'' including ''a Member Affiliate that has consented to having its securities account at a Clearing Member treated as a non-customer account.'' OCC Clearing Members hold omnibus accounts at OCC for customer positions (*i.e.,* a ''customers' account'' as defined in Article I, Section 1.C.(37) of the By-Laws) and non-customer positions (*i.e.,* a ''firm account'' as defined in Article I, Section 1.F.(6) of the By-Laws).

[6] Rule 401 specifies the information that Clearing Members need to include in trades submitted to OCC. As described below, Market-Maker trades already include information that allows a Clearing Member that clears for Market-Makers to assign the trades to individual Market-Maker accounts.

[7] Certain provisions related to the CMTA process were never implemented because they contemplated that the exchanges would adopt rules to implement them. In particular, Rule 401(a) provides that confirmed trade information submitted to OCC ''include a Customer CMTA Indicator, a CMTA Customer Identifier, and an IB Identifier to the extent required under applicable Exchange rules.'' Such rules were never adopted.

[8] The term ''Introducing Broker'' is defined in Article I, Section 1.I.(12) of the By-Laws as ''a broker-dealer or futures commission merchant that takes an order for a transaction in a cleared contract from a CMTA Customer, executes or arranges for another broker-dealer or futures commission merchant to execute such transaction and, in the case of an Introducing Broker that is not a Clearing Member, arranges for its Clearing Member or the executing broker-dealer's or futures commission merchant's Clearing Member to direct the resulting confirmed trade to be transferred to a designated account of a Carrying Clearing Member.''

[9] The term ''Clearing Member Group'' is defined in Article I, Section 1.C.(17) of the By-Laws as ''a Clearing Member and any Member Affiliates of such Clearing Member.''

[10] *See, e.g.,* Nasdaq PHLX LLC (''Phlx'') Rules 1037 and 1052. Phlx recently amended its rules regarding give-ups at the exchange. *See* Release No. 34–85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (order approving File No. SR–Phlx–2018–72). Under the rule change, Phlx clearing members will be allowed to ''opt in'' and request that the exchange systematically restrict use of one or more of its OCC clearing numbers (each a ''Restricted OCC Number''). Once restricted, Phlx member organizations will not be able to give up the Restricted OCC Number to clear a Phlx

customer trades under the give-up process, OCC understands that an executing broker (*e.g.,* a floor broker) can execute a customer's trade on an exchange and give-up (*i.e.,* assign) the trade automatically to the customer's clearing broker, which must be an OCC Clearing Member. The trade clears directly in the Clearing Member's omnibus customers' account at OCC with no reference to the individual customer account, which can make it difficult for the Clearing Member to promptly determine which customer account to assign the trade.

Similarly, for non-customer trades under the give-up process, OCC understands that a trading desk at a Clearing Member Group with multiple trading desks can use an executing broker on an exchange to execute a non-customer (*i.e.,* proprietary) trade. The executing broker can give-up the Clearing Member on the trade without including account identifying information on the trade and the trade clears directly into the Clearing Member's omnibus firm account at OCC. Because the trade does not include account identifying information, staff at the Clearing Member may not be immediately aware of which trading desk account at the firm executed the trade. Similarly, OCC also understands that this can occur in a joint back office (''JBO'') arrangement at a Clearing Member where one of the JBO Participants in such an arrangement uses an executing broker on an exchange to execute a non-customer (*i.e.,* proprietary) trade.[11] The executing broker can give-up the Clearing Member on the trade without including account identifying information on the trade and the trade clears directly into the Clearing Member's omnibus firm account at OCC. Because the trade does not include account identifying information, staff at the Clearing Member may not be immediately aware of which JBO Participant account originated the trade.

Actionable Identifier Requirement

In response to these concerns, OCC proposes to amend Rule 401 to require that an Actionable Identifier be included in all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Maker trades. Although Market-Makers are non-customers under OCC's By-Laws and Rules and their trades are occasionally routed through CMTA arrangements, OCC is not proposing that an Actionable Identifier be included on Market-Maker trades because such trades already include an identifier that allows Clearing Members that clear trades for Market-Makers to identify the Market-Maker account in which to clear a Market-Maker trade.[12]

The requirement to include an Actionable Identifier would be added as new paragraph (a)(1)(iii) to Rule 401.[13] Subject to the implementation plan for the Actionable Identifier requirement described in the Proposed Implementation Plan section below, the new paragraph would require the trade information submitted to OCC for a customer or non-customer transaction (other than a Market-Maker transaction) to include an Actionable Identifier from the Purchasing Clearing Member and an Actionable Identifier from the Writing Clearing Member.[14] Because the Actionable Identifier is not necessary for OCC to direct trades to the correct omnibus account at Clearing Members, OCC is not mandating the information as a condition for acceptance of the trade at this point in time. This also will give the industry time to implement the requirement without resulting in trades being rejected by OCC if the Actionable Identifier were omitted from a trade. Thus, OCC has included language in new paragraph (a)(1)(iii) of Rule 401 to clarify that even though an Actionable Identifier is required on trades, it is not required as a condition for OCC to accept a trade.

An Actionable Identifier would be defined in Interpretation and Policy .06 to Rule 401 as either the name, series of numbers, or other identifying information assigned by a Purchasing Clearing Member or Writing Clearing Member to a customer or non-customer account (other than a Market-Maker account) at the Clearing Member that originated the options transaction. If the Clearing Member transmits the Actionable Identifier to another Clearing Member to clear the transaction as part of a CMTA arrangement, the Clearing Member transmitting the Actionable Identifier must establish and maintain policies and procedures reasonably designed to include sufficient information in the Actionable Identifier field regarding the account that originated the trade to allow that other Clearing Member to promptly clear the transaction.

The Actionable Identifier definition is intended to give Clearing Members flexibility in determining what they include in the field by providing that Clearing Members can use either the name, series of numbers, or other identifying information assigned to the individual customer or non-customer account at the Clearing Member that originated the options transaction.[15] For instance, with regard to customer trades in a CMTA arrangement, an Executing Clearing Member and Carrying Clearing Member in such an arrangement can work together to agree upon the type of account identifying information to be included in such trades to allow staff at the Carrying Clearing Member to promptly assign such trades to the correct individual customer accounts. Similarly, with regard to non-customer trades in a CMTA arrangement, a Carrying Clearing Member can work with trading desks at the Carrying Clearing Member and/or its affiliates within a Clearing Member Group to establish the type of account identifying information to be included in such

transaction unless the Phlx clearing member previously has submitted to the exchange written authorization permitting that member organization to give up that Restricted OCC Number.

[11] A ''JBO Participant'' is defined in Article I, Section 1.J.(1) of the By-Laws as ''a broker-dealer registered with the Securities and Exchange Commission that: (i) Maintains a joint back office arrangement with a Clearing Member pursuant to the requirements of Regulation T promulgated by the Board of Governors of the Federal Reserve System; (ii) meets the requirements applicable to JBO Participants as specified in Exchange Rules; and (iii) consents to having his confirmed trades cleared and positions carried in a JBO Participants' account. A JBO Participant shall be considered a 'Market-Maker' for purposes of these By-Laws and Rules, except for purposes of Chapter IV of the Rules, or where the context otherwise requires.''

[12] Currently, all Market-Maker trades submitted to OCC include a three-character identifier that identifies the Market-Maker that executed the trade. OCC understands that exchange rules require that Market-Maker trades have identifiers on them. *See, e.g.,* Cboe Rule 6.51. Thus, Market-Maker trades already have their own form of identifier. These identifiers are used by Clearing Members and OCC to book Market-Maker trades in the correct Market-Maker accounts at the Clearing Members.

[13] Pursuant to a recent rule change, OCC amended Rule 401 to make certain clarifying changes to the rule. *See* Securities Exchange Act Release No. 83321 (May 24, 2018), 83 FR 25087 (May 31, 2018) (SR–OCC–2018–007) (Notice of Filing of Amendment No. 1 and Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Related to The Options Clearing Corporation's Trade Acceptance and Novation Rules).

[14] A ''Purchasing Clearing Member'' is defined in Article I, Section 1.P.(16) of the By-Laws as ''the Clearing Member acting as, or on behalf of, the purchaser of a cleared contract.'' A ''Writing Clearing Member'' is defined in Article I, Section 1.W.(3) as ''the Clearing Member acting as, or on behalf of, the writer (as defined, in the case of, in this Article I, and in the case of BOUNDs, in Article XXIV of the By-Laws) of a cleared contract.''

[15] OCC currently provides Clearing Members with the functionality to designate sub-accounts within their omnibus customer and firm accounts held at OCC. *See* Interpretation and Policy .04 to Article VI, Section 3 of OCC's By-Laws. To the extent Clearing Members start to use sub-accounts to identify which individual customer or non-customer account at the Clearing Member to book a trade, OCC believes that such sub-account identifying information on the trade would satisfy the Actionable Identifier requirement in this proposed rule change.

trades by the Executing Clearing Member to allow staff at the Carrying Clearing Member to promptly assign such trades to the correct individual non-customer accounts. In both of these situations, while the obligation to include the Actionable Identifier on a trade is with the Executing Clearing Member, coordination and agreement between the Executing Clearing Member and Carrying Clearing Member is needed in order to assure that the Carrying Clearing Member can use the Actionable Identifier on a trade to promptly clear the trade in the correct customer or non-customer account.

The Actionable Identifier requirement also is intended to address concerns about give-up trades. As noted, OCC understands that an executing broker can execute a customer's trade on an exchange and give-up the trade automatically to the customer's OCC Clearing Member. The trade clears directly in the Clearing Member's omnibus customers' account at OCC, sometimes with no reference to the customer account that originated the trade. OCC understands that the requirement to include an Actionable Identifier on such a trade will enable the Clearing Member to timely identify the individual customer account associated with the trade. Also, Clearing Members that are part of Clearing Member Groups with multiple trading desks have indicated that an Actionable Identifier would help them timely identify which trading desk account at the firm initiated a non-customer trade received by the Clearing Member though the give-up process. Similarly, Clearing Members with JBO arrangements have indicated that an Actionable Identifier would help them timely identify which JBO Participant account initiated a non-customer trade received by the Clearing Member though the give-up process.[16]

The Actionable Identifier requirement is different than a traditional customer identification requirement in that it is solely designed to provide enough information to the Clearing Member receiving the trade to allow the Clearing Member to clear the trade for the account that originated the trade; it is not intended to provide any other information regarding the account that originated the trade. OCC does not anticipate that the Actionable Identifier will involve any personally identifiable information (''PII'') regarding the account that originated the trade. Rather, with regard to CMTA arrangements, OCC expects that the Actionable Identifier will consist of a series of numbers or institutional name that would allow the Executing Clearing Member and Carrying Clearing Member to identify the account that originated the trade, neither of which by itself is PII. Similarly, with regard to give-up arrangements, OCC expects that the Actionable Identifier will consist of a series of numbers or institutional name that would allow the Clearing Member clearing the give-up trade to identify the account that originated the trade.

OCC worked very closely with Clearing Members in developing the proposed Actionable Identifier requirement. They requested flexibility in deciding what information to include in the Actionable Identifier field. Thus, the proposed rule change is designed to provide this flexibility by allowing Clearing Members to work together to agree on the way they will identify customers and non-customers subject to CMTA and give-up arrangements. This flexibility also would allow them to avoid including PII in the Actionable Identifier field.

Consistent with this flexibility, OCC has determined to implement the obligation that Actionable Identifiers include sufficient information through a policies and procedures-based approach. Under Interpretation and Policy .06 to Rule 401, Clearing Members transmitting Actionable Identifiers to other Clearing Members to clear purchase or sale transactions would be required to establish and maintain policies and procedures reasonably designed to include sufficient information in the Actionable Identifier fields to allow the Clearing Members receiving such Actionable Identifiers to promptly clear the transactions. OCC believes that implementing the requirement in this manner will provide Clearing Members in CMTA arrangements with flexibility in how they operationalize the requirement, allowing Executing Clearing Members to work with Carrying Clearing Members to establish processes that they believe are reasonably designed to provide enough information in the Actionable Identifier fields to allow the Carrying Clearing Members to promptly direct CMTA transactions to the correct individual customer and non-customer accounts.

OCC believes that having such an identifier on trades would allow Clearing Members to more timely identify trades transmitted as part of CMTA and give-up arrangements. As indicated, OCC has had extensive conversations over time with Clearing Members related to this proposed Actionable Identifier requirement. OCC's primary takeaway from these conversations is that the requirement should help further improve the CMTA process. Carrying Clearing Members believe the requirement will help them address above noted concerns they have about the CMTA process by immediately identifying to them the specific customer or non-customer account on a CMTA trade sent to them by an Executing Clearing Member. Executing Clearing Members have expressed support for the requirement because they recognize that it should help streamline the CMTA process, requiring less back-and-forth communication between them and Carrying Clearing Members about which individual customer or non-customer account originated a CMTA trade. OCC's other takeaway from these conversations is that Clearing Members believe the requirement will help them address above noted concerns they have about the give-up process by allowing them to timely identify which account to assign a trade received through the give-up process.

Proposed Implementation Plan

With regard to CMTA trades, both the Executing Clearing Member and Carrying Clearing Member will need to work together to determine appropriate Actionable Identifiers for the accounts subject to their CMTA arrangement. Similarly, with regard to give-up trades, Clearing Members will need to coordinate on processes to include Actionable Identifiers on trades submitted through the give-up process. Since this will take some time, OCC plans to implement the Actionable Identifier requirement in a phased manner and to work with Clearing Members to make sure the requirement is implemented in a workable manner for them.

OCC proposes to include the implementation plan for the requirement in new Interpretation and Policy .06 to the Rule. The plan sets forth the effective dates for the rule change, providing that (a) from the date on which the Actionable Identifier requirement is approved (''approval date'') to the end of the twelfth month from such approval date, OCC will not treat as a violation of Rule 401 the failure to include an Actionable Identifier or the failure of a Clearing Member's policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member

[16] As noted in the ''JBO Participant'' definition, a JBO Participant is treated as a Market-Maker for purposes of OCC's By-Laws and Rules other than for purposes of Chapter IV of OCC's Rules. Thus, by the terms of this definition, even though proposed Rule 401's Actionable Identifier requirement would exclude Market-Maker trades, it would not exclude JBO Participant trades.

receiving such Actionable Identifier to promptly clear the transaction, (b) from the thirteenth to the end of the eighteenth month from such approval date, an Actionable Identifier will be required but OCC will not treat as a violation of Rule 401 the failure of a Clearing Member's policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction, and (c) from the nineteenth month after such approval date and thereafter, OCC will treat as a violation of Rule 401 the failure to include an Actionable Identifier or the failure of a Clearing Member's policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction, subject to the manner in which OCC enforces violations of its rules in Rule 1201. OCC also has included rule text at the end of Interpretation and Policy .06 to Rule 401 to provide that the rule text that sets forth the proposed implementation plan described above will automatically be deleted at the end of the nineteenth month after the approval date. Nonetheless, OCC plans to continue to enforce the Actionable Identifier requirement in Rule 401 as set forth in (c) above, treating as a violation of Rule 401 the failure to include an Actionable Identifier or the failure of a Clearing Member's policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction.

Throughout this implementation period, OCC plans to create summary reports and statistics on Clearing Members that do not include Actionable Identifiers. This information will be shared periodically with firms individually throughout the implementation of the Actionable Identifier requirement to help foster compliance with the requirement. In addition, OCC notes that listed options trade reports to OCC currently include a field that is labelled at the exchange-level as the Account field. Once implemented, the Actionable Identifier information will be required to be populated in this field. Thus, Clearing Members will be able to see on OCC's trade screen, which allows Clearing Members to view trades in OCC's Encore system, and detect in OCC's trade messages whether this field is populated. OCC plans to enhance the trade screen to include additional filter criteria to allow Clearing Members to view trades with no Actionable Identifier.

Once the Actionable Identifier requirement becomes fully effective eighteen months after the approval date of the requirement, OCC anticipates monitoring compliance with the requirement through an annual certification process in which OCC would require Clearing Members to certify, in a form and manner specified by OCC, that they have policies and procedures reasonably designed to provide that sufficient information is included in the Actionable Identifier fields to allow the Clearing Member(s) receiving such Actionable Identifiers to promptly clear the transactions. OCC also anticipates including a review of Clearing Members' Actionable Identifier policies and procedures when it conducts its periodic risk-based examinations.

In addition to this oversight of the process by OCC, it is anticipated that if a Carrying Clearing Member believes that the Actionable Identifier transmitted to it does not provide sufficient information to allow it to identify the correct account, the Carrying Clearing Member would reach out to the Executing Clearing Member on the trading day when this happens to resolve the issue. It is also anticipated that if a Carrying Clearing Member experiences a pattern or practice in which Actionable Identifiers transmitted to it by an Executing Clearing Member do not provide sufficient information to allow it to identify the correct accounts, the Carrying Clearing Member could reach out to OCC to report such activity and/or terminate the CMTA arrangement. It is anticipated that a Clearing Member in a give-up arrangement would take similar courses of action if it believed Actionable Identifier(s) transmitted to it do(es) not provide sufficient information to allow it to identify the correct account(s).

Rule 401 Clean-Up Edits

OCC proposes to amend the last sentence of first paragraph (a) of rule to add the phrase ''in this rule'' so that it would read, ''[t]he acceptance of every confirmed trade and the issuance of every cleared contract by the Corporation as provided *in this rule* shall be subject to the conditions that this reported trade information (i) passes the Corporation's trade validation process, (ii) is provided to the Corporation during such times as the Corporation shall prescribe, and (iii) satisfies certain criteria, as specified in paragraphs (a)(1) and (a)(2) of this Rule 401.'' This change is intended to include a phrase that was inadvertently omitted when the rule was updated and to further clarify the scope of the rule.

OCC also proposes to change the references to ''the security type'' in paragraphs (a)(1)(i)(G) and (a)(2)(G) of the rule to ''the product type'' to more accurately reflect the information this trade field requires. In particular, the field mandates the inclusion of information indicating that the trade was for a security, a future, or an option on future. Since OCC now clears products that are securities and products that are commodity futures or options on such futures, OCC has determined to change these references in the rule to more accurately reflect the information mandated by the field.

Finally, OCC proposes to change the references to ''the Give-Up Clearing Member'' in paragraphs (a)(1)(i)(P) and (a)(2)(N) of the rule to ''the Given-Up Clearing Member.'' The defined term in OCC's By-Laws is ''Given-Up Clearing Member'' rather than ''Give-up Clearing Member.'' The definition of Given-Up Clearing Member can be found in Article I, Section 1.G.(3) of the By-Laws.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act [17] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and to foster cooperation and coordination with persons engaged in clearance and settlement. OCC believes the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in clearance and settlement. In this regard, as noted above, the proposed rule change is designed to allow Clearing Members to more promptly and accurately clear and settle securities options trades that are subject to CMTA and give-up arrangements.

With regard to CMTA arrangements, the proposed rule change furthers this statutory goal by requiring that an Actionable Identifier be included on all customer and non-customer trades, other than Market-Maker trades, that would provide sufficient information regarding the account that originated the trade to allow a Carrying Clearing Member to promptly clear and settle the trade in the appropriate customer or non-customer account. While the vast

[17] 15 U.S.C. 78q–1(b)(3)(F).

majority of trades allocated through the CMTA process flow through to the correct individual customer or non-customer account at a Carrying Clearing Member without issue, Clearing Members involved in such arrangements have observed that the Actionable Identifier requirement will provide additional information to them to allow them to more promptly and accurately clear and settle securities options trades that are subject to CMTA arrangements. The proposed rule change also furthers the statutory goal of fostering cooperation and coordination with persons engaged in clearance and settlement by implementing the obligation that Actionable Identifiers include sufficient information through a policies and procedures-based approach. Implementing the requirement in this manner will provide Clearing Members in CMTA arrangements with flexibility in how they operationalize the requirement, allowing them to establish processes that they believe are reasonably designed to provide enough information in the Actionable Identifier fields to allow the Clearing Members receiving such Actionable Identifiers to promptly direct CMTA transactions to the correct individual customer and non-customer accounts.

Similarly, with regard to give-up arrangements, the proposed rule change furthers the statutory goal of prompt and accurate clearance and settlement by requiring that an Actionable Identifier be included in customer and non-customer trades received by Clearing Members through the give-up process. Clearing Members have indicated that the inclusion of an Actionable Identifier on such trades would allow them to more promptly and accurately clear and settle securities options trades that are subject to give-up arrangements. The proposed rule change also furthers the statutory goal of fostering cooperation and coordination with persons engaged in clearance and settlement by implementing the obligation that Actionable Identifiers include sufficient information through a policies and procedures-based approach. Such an approach would allow Clearing Members involved in give-up arrangements to establish processes that they believe are reasonably designed to provide enough information in the Actionable Identifier fields to provide for the prompt clearance and settlement of give-up transactions.

In addition, the proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [18] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.[19] The proposed rule change would not affect the competitive dynamics between clearing members in that it would apply to all Clearing Members equally. The proposed rule change also would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. In this regard, as described above, the proposed rule change is designed to further facilitate the prompt and accurate clearance and settlement of securities transaction. It would require that an Actionable Identifier be included on all customer and non-customer trades, other than Market-Maker trades, to allow Clearing Members to more promptly and accurately clear and settle securities options trades in the appropriate account.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2019–003 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–OCC–2019–003. 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 OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2019–003 and should be submitted on or before April 24, 2019.

[18] 15 U.S.C. 78q–1(b)(3)(I).

[19] 15 U.S.C. 78q–1(b)(3)(I).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06431 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33431; File No. 812–14944]

iM Global Partner US LLC and Manager Directed Portfolios; Notice of Application

March 28, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creations Units in-kind in a master-feeder structure; and (g) the Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

Applicants: Manager Directed Portfolios (the ''Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series and iM Global Partner US LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on August 31, 2018 and amended on December 12, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: iM Global Partner US LLC, 300 Barr Harbor Drive, Suite 720, Conshohocken, PA 19428 and Manager Directed Portfolios, 615 East Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Senior Counsel, at (202) 551–6446 or Parisa Haghshenas, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only (other than pursuant to a dividend reinvestment program).

[1] Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any existing or future open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF, and their respective existing or future Master Funds. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06428 Filed 4–2–19; 8:45 am]

BILLING CODE P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85440; File No. SR–OCC–2019–002]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Margin Methodology for Volatility Index Futures

March 28, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2019, the Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is filed in connection with proposed changes to modify OCC's margin methodology for futures on indexes designed to measure volatilities implied by prices of options on a particular underlying interest (such indexes being ''Volatility Indexes,'' and futures contracts on such Volatility Indexes being ''Volatility Index Futures''). The proposed methodology enhancements for Volatility Index Futures would include: (1) Introducing ''synthetic'' futures (discussed below) into the daily re-estimation of prices and correlations for Volatility Index Futures; (2) an enhanced statistical distribution for modeling price returns of the ''synthetic'' futures; and (3) a new anti-procyclical floor for variance estimates. The proposed changes are discussed in detail in Section II below.

The proposed changes to OCC's Margins Methodology document are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contained in confidential Exhibit 5 of the filing. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text. OCC also has included backtesting and impact analysis of the proposed model changes in confidential Exhibit 3.

The proposed rule change is available on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.* All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to introduce enhancements to OCC's margin methodology for Volatility Index Futures so that OCC's margin model reflects more current market information for Volatility Index Futures and allows for more appropriate modeling of the risk attributes of such products. Specifically, the proposed methodology enhancements for Volatility Index Futures would include: (1) Introducing ''synthetic'' futures into the process for daily re-estimation of prices and correlations for Volatility Index Futures; (2) an enhanced statistical distribution for modeling price returns for ''synthetic'' futures; and (3) a new anti-procyclical floor for variance estimates. OCC's current model for Volatility Index Futures and the proposed changes thereto are described in further detail below.

Background

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''),[4] is OCC's proprietary risk management system that calculates Clearing Member margin requirements. STANS utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.[5] The STANS margin requirement is calculated at the portfolio level of Clearing Member accounts with positions in marginable securities. The STANS margin requirement consists of an estimate of a 99% expected shortfall[6] over a two-day time horizon and an add-on margin charge for model risk (the concentration/dependence stress test charge).[7] The STANS methodology is used to measure the exposure of portfolios of options, futures and cash instruments, including the Volatility Index Futures cleared by OCC.[8]

Volatility Indexes are indexes designed to measure the volatility that is implied by the prices of options on a particular reference index or asset. For example, the Cboe Volatility Index (''VIX'') is an index designed to measure the 30-day expected volatility of the Standard & Poor's 500 index (''SPX'').[9] OCC currently clears futures contracts on such Volatility Indexes. These Volatility Index Futures contracts can consequently be viewed as an indication of the market's future expectations of the volatility of a given Volatility Index's underlying reference index (*e.g.,* in the case of the VIX, providing a snapshot of the expected market volatility of the underlying over the term of the options making up the index).

Current Model for Volatility Index Futures

Under OCC's existing margin methodology, OCC models the potential final settlement prices of Volatility Index Futures using the underlying index as the risk factor.[10] Final settlement prices are simulated under the assumption that the logarithm of the values of the risk factor (*i.e.,* the underlying spot Volatility Index) follows a mean-reverting[11] random walk[12] with normally-distributed steps.[13] The model is designed to calibrate the distribution that defines this mean-reversion behavior so that the expected final settlement prices of the futures match their currently-observed market prices to ensure that margin coverage is sufficient to limit credit exposures to OCC's participants under normal market conditions. OCC recalculates the Monte Carlo scenarios of the returns of each futures series over its remaining life so that the standard deviation of the scenarios matches two days' worth of the implied volatility of near-the-money and contemporaneously expiring options on the Volatility Index, where available, in order to align with OCC's two-day liquidation period assumption. Currently, the calibration

[3] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[4] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20).

[5] *See* OCC Rule 601.

[6] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[7] A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/.*

[8] Pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts on a gross basis using the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN''). Commodity Futures Trading Commission (''CFTC'') Rule 39.13(g)(8), requires, in relevant part, that derivatives clearing organizations (''DCOs'') collect initial margin for customer segregated futures accounts on a gross basis. While OCC uses SPAN to calculate initial margin requirements for segregated futures accounts on a gross basis, OCC believes that margin requirements calculated on a net basis (*i.e.,* permitting offsets between different customers' positions held by a Clearing Member in a segregated futures account using STANS) affords OCC additional protections at the clearinghouse level against risks associated with liquidating a Clearing Member's segregated futures account. As a result, OCC calculates margin requirements for segregated futures accounts using both SPAN on a gross basis and STANS on a net basis, and if at any time OCC staff observes a segregated futures account where initial margin calculated pursuant to STANS on a net basis exceeds the initial margin calculated pursuant to SPAN on a gross basis, OCC collateralizes this risk exposure by applying an additional margin charge in the amount of such difference to the account. *See* Securities Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (SR–OCC–2014–13).

[9] Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the value of the option's annualized standard deviation of the price of the underlying security, index, or future at exercise, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and given the current risk-free rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the then-current intrinsic value (*i.e.,* the difference between the price of the underlying and the exercise price of the option) of the option, discounted to reflect its time value.

[10] A ''risk factor'' within OCC's margin system may be defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product.

[11] In finance, the term ''mean reversion'' describes a financial time series in which returns can be very unstable in the short run but very stable in the long run.

[12] A random walk is a continuous process with random increments drawn independently from a particular distribution.

[13] This is known as a Gaussian Ornstein-Uhlenbeck process. *See* Uhlenbeck, G.E. and L.S. Ornstein, ''On the Theory of Brownian Motion,'' *Physical Review,* 36, 823–841 (1930) (explaining the Gaussian Ornstein-Uhlenbeck process).

for the distribution is performed on a daily basis.

OCC's current model for Volatility Index Futures, which utilizes the underlying Volatility Index as the sole risk factor, is subject to certain limitations, which would be addressed by the proposed changes described herein. Volatility Indexes, unlike futures contracts, are not investible (*i.e.,* they cannot be replicated by static portfolios of traded contracts). In addition, the futures market has a term structure that cannot be modeled using just the underlying index. Finally, futures on a Volatility Index are less volatile and less fat-tailed [14] than the index itself, and these features are term-dependent. The current model was developed before sufficient data on the futures was available, so a model based on ''synthetic'' futures,[15] as proposed herein, was not an option at the time. Also, the current model does not account for certain strategies Clearing Members might employ involving spreads between delivery dates, which may result in under-margining of those positions.

In recent years, OCC has seen significant growth in trading volume for Volatility Index Futures. As a result, OCC is proposing a number of enhancements to its margin methodology designed to provide for more accurate and responsive margin requirements for Volatility Index Futures.

Proposed Changes

The purpose of the proposed rule change is to introduce enhancements to OCC's margin methodology so that OCC's margin models reflect more current market information for Volatility Index Futures, introduce asymmetry into the statistical distribution used to model price returns of the ''synthetic'' futures, and reduce procyclicality [16] in the model.

The proposed changes would specifically include: (1) The daily re-estimation of prices and correlations using ''synthetic'' futures; (2) an enhanced statistical distribution for modeling price returns for ''synthetic'' futures; and (3) a new anti-procyclical floor for variance estimates.[17] The main feature of the proposed model, relative to the current model, is the replacement of the underlying Volatility Index itself as a risk factor by risk factors that are based on observed futures prices (*i.e.,* the ''synthetic'' futures contracts). The proposed change would introduce a new set of risk factors and method for generating scenarios for those risk factors, and hence Volatility Index Futures settlement prices, to be incorporated into the STANS margin calculations. OCC believes its proposed methodology would provide for more accurate and responsive margin requirements and that the imposition of a floor for variance estimates would mitigate procyclicality in OCC's margin methodology for Volatility Index Futures. The proposed changes are described in further detail below.

1. Daily Re-Estimations Using Synthetic Futures

As noted above, OCC currently models the potential final settlement prices of Volatility Index Futures based on the underlying index itself. OCC proposes to modify its modeling approach for Volatility Index Futures by modeling the price distributions of ''synthetic'' futures on a daily basis based on the historical returns of futures contracts with approximately the same tenor (as opposed to OCC's current approach of calibrating the distribution based on the Volatility Index itself). A ''synthetic'' futures time series for the intended purposes of OCC relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis. One feature of futures contracts is that each contract may have a different expiration date, and at any one point in time there may be a variety of futures contracts on the same underlying interest, all with varying dates of expiry, so that there is no one continuous time series for those futures. ''Synthetic'' futures can be used to generate a continuous time series of futures contract prices across multiple expirations. These ''synthetic'' futures price return histories would be inputted into the existing Copula simulation process in STANS alongside the underlying interests of OCC's other cleared and cross-margin products and collateral. The purpose of this use of ''synthetic'' futures is to allow the margin system to better approximate correlations between futures contracts of different tenors by creating more price data points and their margin offsets.

Under the proposal, the historical ''synthetic'' time series for these Volatility Indexes would be updated daily and mapped to their corresponding futures contracts. By construction, the first ''synthetic'' time series would always contain returns of the front contract (*i.e.,* the contract closest to maturity, on any given day), the second, which would correspond to the next month out, and the remaining series would follow the same pattern. Following the expiration date of the front contract, each contract within a time series would be replaced with a contract maturing one month later. While ''synthetic'' time series contain returns from different contracts, a return on any given date is constructed from prices of the same contract (*e.g.,* as the front month futures contract ''rolls'' from the current month to the subsequent month, returns on the roll date would be constructed by using the same contract and not by calculating returns across months). The marginal probability distribution parameters for the ''synthetic'' time series (*i.e.,* marginal probabilities of various values of the variables in the distribution without reference to the values of the other variables) would be estimated daily using recent historical observations.[18] In cases in which the GARCH variance [19] forecast falls below the sample variance, in addition to being floored by the sample variance, the ''synthetic'' time series would additionally be ''scaled up'' through the introduction of a new floor on variance estimates based on the corresponding underlying index in order to reduce

[14] A data set with a ''fat tail'' is one in which extreme price returns have a higher probability of occurrence than would be the case in a normal distribution.

[15] As discussed in further detail below, a ''synthetic'' futures time series, for the intended purposes of OCC, relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis.

[16] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' For example, procyclicality may be evidenced by increasing margin or Clearing Fund requirements in times of stressed market conditions and low margin or Clearing Fund requirements when markets are calm. Hence, anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

[17] OCC would also make a number of conforming changes throughout it Margins Methodology so that the document arcuately reflects the adoption of the new model.

[18] However, for any tenor extension or new contract that does not have enough historical data for the associated ''synthetic'' security, the scenarios for the longest tenor ''synthetic'' with enough history would be used as a proxy for generating futures theoretical price scenarios. In this case, the long run floor (discussed below) would be borrowed from the proxy ''synthetic.''

[19] *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986). The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. The general distinction between the ''GARCH variance'' and the ''sample variance'' for a given time series is that the GARCH variance uses the underlying time series data to forecast volatility.

procyclicality in the model (as discussed in further detail below).

OCC believes that using synthetic futures in its daily re-estimation process would allow OCC's econometric model for Volatility Index Futures to reflect more current market information and achieve better coverage across the term curve.[20] As a result, OCC believes the proposed changes would result more accurate margin requirements for Clearing Members under the current market conditions.

2. Enhancements to Statistical Distribution for Volatility Index Futures

In addition to using a ''synthetic'' futures price return history in the process for daily re-estimation of model parameters, OCC is proposing additional enhancements to its margin methodology for Volatility Index Futures to introduce asymmetry into the statistical distribution used to model price returns of the ''synthetic'' futures. The econometric model currently used in STANS for all price risk factors is an asymmetric GARCH(1,1) with symmetric Standardized Normal Reciprocal Inverse Gaussian (or ''NRIG'')-distributed logarithmic returns.[21] OCC proposes to move to an asymmetric NRIG distribution for purposes of modeling proportionate returns of the ''synthetic'' futures. OCC believes the asymmetric NRIG distribution has a better ''goodness of fit'' [22] to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. As a result, OCC believes that the proposed change would lead to more consistent treatment of returns both on the upside as well as downside of the distribution. Accordingly, OCC believes that the proposed changes would result in margin requirements for Volatility Index Futures that respond more appropriately to changes in market volatility and therefore are more accurate.

3. Introduction of Anti-Procyclical Floor for Variance Estimates

OCC also proposes to introduce a new floor for variance estimates of the Volatility Index Futures that would be modeled under the newly proposed approach to mitigate procyclicality in OCC's margin model. In order to incorporate a variance level implied by a longer time series of data, OCC would calculate a floor for variance estimates based on the underlying index (*e.g.,* VIX) which is expected to have a longer history that is more reflective of the long-run variance level that cannot be otherwise captured using the ''synthetic'' futures data. The floor would therefore reduce the impact of a sudden increase in margin requirements from a low level and therefore mitigate procyclicality in the model.

Clearing Member Outreach

In order to inform Clearing Members of the proposed change, OCC has provided updates to members at OCC Roundtable [23] and Financial Risk Advisory Council (or ''FRAC'') [24] meetings and will provide additional reminders about the proposed changes at its next FRAC meeting. In addition, OCC will publish an Information Memo to all Clearing Members describing the proposed changes and will provide additional periodic Information Memo updates prior to the implementation date. Additionally, OCC will perform targeted and direct outreach with Clearing Members that would be most impacted by the proposed change, and OCC would work closely with such Clearing Members to coordinate the implementation and to discuss the impact and timing of any required collateral deposits that may result from the proposed change.[25]

Implementation Timeframe

OCC plans to implement the proposed changes on May 20, 2019, provided that all necessary regulatory approvals are received by that date. If all regulatory approvals are not received by May 20, 2019, or if implementation on that date becomes otherwise impractical, OCC will implement the proposed changes within thirty (30) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce any alternative implementation date of the proposed changes by an Information Memo posted to its public website at least one week prior to implementation.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act [26] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of Act [27] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The purpose of the proposed rule change is to introduce enhancements to OCC's margin methodology so that OCC's margin models reflect more current market information for Volatility Index Futures; use a statistical distribution for modeling proportionate returns of the ''synthetic'' futures, which OCC believes has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution; and reduce procyclicality in the model.

The main feature of the proposed model, relative to the current model, is the replacement of the underlying Volatility Index itself as a risk factor by risk factors that are based on observed futures prices (*i.e.,* the ''synthetic'' futures contracts). OCC believes that using ''synthetic'' futures in its daily re-estimation process would allow OCC's econometric model for Volatility Index Futures to reflect more current market information and achieve better coverage across the term curve. As a result, OCC believes the proposed changes would result more accurate margin requirements for Clearing Members under the current market conditions that respond more appropriately to changes in market volatility. In addition, OCC believes that the proposed change to an asymmetrical NRIG statistical distribution would lead to more consistent treatment of returns both on the upside as well as downside of the distribution and therefore result in margin requirements for Volatility Index Futures that respond more appropriately to changes in market

[20] In 2018, the Commission approved, and issued a Notice of No-Objection to, proposed changes to OCC's margin methodology designed to enable OCC to: (1) Obtain daily price data for equity products for use in the daily estimation of econometric model parameters; (2) enhance OCC's econometric model for updating statistical parameters for all risk factors that reflect the most recent data obtained; (3) improve the sensitivity and stability of correlation estimates across risk factors by using de-volatized returns; and (4) improve OCC's methodology related to the treatment of defaulting securities. *See* Securities Exchange Act Release No. 83326 (May 24, 2018), 83 FR 25081 (May 31, 2018) (SR–OCC–2017–022) and Securities Exchange Act Release No. 83305 (May 23, 2018), 83 FR 24536 (May 29, 2018) (SR–OCC–2017–811). Under the proposal, correlation updates for ''synthetic'' futures would be done daily with a one-day lag.

[21] *See id.*

[22] The goodness of fit of a statistical model describes the extent to which observed data match the values generated by the model.

[23] The OCC Roundtable was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues. It is comprised of representatives of senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

[24] The Financial Risk Advisory Council is a working group comprised of exchanges, Clearing Members and indirect participants of OCC.

[25] Specifically, OCC will discuss with those Clearing Members how they plan to satisfy any increase in their margin requirements associated with the proposed change.

[26] 15 U.S.C. 78q–1.

[27] 15 U.S.C. 78q–1(b)(3)(F).

volatility and therefore are more accurate. Finally, the proposed rule change would also enhance OCC's approach for modeling Volatility Index Futures by introducing a floor on variance estimates in the model to mitigate procyclicality.

The proposed model would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants, and OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. As a result, OCC believes the proposed rule changed is designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and assure the safeguarding of securities and funds in its custody or control in accordance with Section 17A(b)(3)(F) of the Act.[28]

Rule 17Ad–22(b)(1)[29] requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. As described above, the proposed rule change would introduce new model enhancements for OCC's cleared Volatility Index Futures. OCC would use the risk-based model enhancements described herein to measure its credit exposures to its participants on a daily basis and determine margin requirements based on such calculations. OCC believes that the proposed enhancements would result in more accurate and responsive margin requirements by ensuring that OCC's margin models reflect more current market information for Volatility Index Futures and using an asymmetric distribution in its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. The proposed rule change would also introduce a new floor on variance estimates in the model to mitigate procyclicality. OCC believes the proposed rule change is therefore designed to ensure that OCC sets margin requirements that would serve to limit OCC's exposures to potential losses from defaults by its participants under normal market conditions so that the operations of OCC would not be disrupted, and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. Accordingly, OCC believes the proposed rule change is consistent with Rule 17Ad–22(b)(1).[30]

Rule 17Ad–22(b)(2)[31] further requires, in part, that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. As noted above, OCC would use the proposed model enhancements to calculate margin requirements for Volatility Index Futures in a manner designed to limit its credit exposures to participants under normal market conditions. Moreover, OCC believes that the proposed risk-based model enhancements for Volatility Index Futures would result in more accurate and responsive margin requirements for OCC's Clearing Members and would introduce an asymmetric distribution into its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. The proposed floor on variance estimates would also help to reduce procyclicality in margin requirements for Volatility Index Futures. The risk-based model would therefore be used to calculate margin requirements designed to limit OCC's credit exposures to participants under normal market conditions in a manner consistent with Rule 17Ad–22(b)(2).[32]

Rules 17Ad–22(e)(6)(i), (iii), and (v)[33] further require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its Credit exposures to its participants by establishing a risk-based margin system that, among other things: (1) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

As described in detail above, OCC believes that the proposed model enhancements would result in more accurate, more responsive, and less procyclical margin requirements for OCC's Clearing Members clearing Volatility Index Futures, with such margin serving to protect other Clearing Members from losses arising as a result of a Clearing Member default. The proposed changes are intended to ensure that OCC's margin models reflect more current market information for Volatility Index Futures and would introduce an asymmetric distribution into its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of the observed asymmetry of the distribution. Additionally, OCC would introduce a floor on variance estimates in the model to limit procyclicality. OCC therefore believes the proposed changes are reasonably designed to consider and produce margin levels commensurate with the risks and particular attributes of OCC's cleared Volatility Index Futures, calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default, and apply an appropriate method for measuring credit exposure that accounts for risk factors and portfolio effects of Volatility Index Futures in a manner consistent with Rules 17Ad–22(e)(6)(i), (iii), and (v).[34]

The proposed rule changes are not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of Act.[35] OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed risk model enhancements would apply to all Clearing Members clearing Volatility Index Futures at OCC. The overall impact of the proposed changes will be

[28] *Id.*

[29] 17 CFR 240.17Ad–22(b)(1).

[30] *Id.*

[31] 17 CFR 240.17Ad–22(b)(2).

[32] *Id.*

[33] 17 CFR 240.17Ad–22(e)(6)(i), (iii), and (v).

[34] *Id.*

[35] 15 U.S.C. 78q–1(b)(3)(I).

mixed and depend on the composition of the portfolio in question. For instance, if a Clearing Member's portfolio is comprised of hedged spread positions in Volatility Index Futures along the term structure, then margins could be much lower when compared to a portfolio that is heavily short the front month futures contract. While at a product level, margins are identical for futures contracts, it is the increased term structure correlations that aid in providing increased offsets depending on the portfolio. OCC does not believe that the proposed rule change would unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user. In addition, the proposed rule change would be applied uniformly to all Clearing Members in establishing their margin requirements.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2019–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2019–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2019–002 and should be submitted on or before April 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06430 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85439; File No. SR–ICEEU–2019–005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Adoption of a New Futures & Options Capital-to-Margin and Shortfall Margin Policy (the "F&O Margin Shortfall Policy")

March 28, 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 15, 2019, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change Notice

ICE Clear Europe proposes to adopt a new F&O Margin Shortfall Policy. These revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to adopt a new F&O Margin Shortfall Policy, which would set out certain additional margin requirements for F&O Contracts based on a Clearing Member's capital-to-margin ratio and certain uncovered stress loss thresholds. The policy is designed to reduce the potential market risk that the Clearing House would need to manage in the event of a Clearing Member default through limiting the size of positions that can be opened and carried by an F&O Clearing Member relative to its margin requirement and capital.

Capital to Margin Limits

Under the F&O Margin Shortfall Policy, ICE Clear Europe would determine ratios of each F&O Clearing Member's balance sheet capital [6] to its original margin (''OM'') requirement,[7] referred to as ''capital-to-margin'' ratios. For most house and customer accounts, the OM requirement would be determined on the basis of the net positions in the account (even if margin requirement for that type of account is otherwise determined on a gross basis).[8] ICE Clear Europe believes this approach appropriately reflects the risk to the Clearing House in the case of F&O Clearing Member default for purposes of the capital-to-margin ratio requirements. For each F&O Clearing Member, ICE Clear Europe would calculate three capital-to-margin ratios: (1) Capital to house account OM (based on the total OM requirement for all house accounts); (2) capital to customer account OM (based on the total OM requirement for all customer accounts); and (3) capital to total OM (based on the total OM requirement for all house and customer accounts).

Pursuant to the proposed F&O Margin Shortfall Policy, Clearing Members would be expected to maintain ratios of at least the following:

- Capital to total OM: (1:3)
- Capital to house account OM: (1:2)
- Capital to customer account OM: (1:3)

A Clearing Member would be in breach of the capital-to-margin limits if either the house or customer account limits were breached, even if the total OM limit were not breached.

Pursuant to the proposed F&O Margin Shortfall Policy, if a Clearing Member breached a capital-margin ratio for a 30-day rolling period, it would be required to take one of the following actions: (1) Providing additional permitted cover (*i.e.,* assets eligible to be provided to satisfy margin requirements) [9] as buffer margin, (2) changing its positions to reduce its OM requirement, (3) increasing its capital or (4) providing a guarantee from a controlling entity. Additional buffer margin would be held for a minimum of one calendar month, and until the Clearing Member would no longer be in breach of the relevant limits set out in the policy. The policy provides that ICE Clear Europe has discretion to consider not taking action, on a case-by-case basis, in situations where the Clearing Member could provide detailed reasons as to why action would not be necessary. Any such decision would be reported to the F&O Product Risk Committee.

Shortfall Margin

The policy would also require F&O Clearing Members to provide additional ''shortfall margin'' to limit the Clearing Member's potential uncovered stress loss. The Clearing House would establish a stress allowance for each F&O Clearing Member using a formula based on its capital (or in certain cases that of its parent). Shortfall margin complements the OM requirement and reduces the risk to the Clearing House from leveraged positions identified as presenting uncollateralized stress losses. The stress allowance would represent the Clearing House's risk tolerance for uncovered stress loss for that Clearing Member. The shortfall margin would be defined as the worst uncovered stress loss for the F&O Clearing Member out of all F&O stress testing scenarios, less the shortfall allowance. The worst stress typically differs for each F&O Clearing Member based on its risk factor sensitivity. ICE Clear Europe Credit Risk Department would review the model parameters for determining the stress allowance on a regular basis and any changes would be communicated to the F&O Product Risk Committee.

Pursuant to the proposed F&O Margin Shortfall Policy, shortfall margin would be collected on a daily basis as part of the end-of-day margining process. Any changes in the total amount of shortfall margin collected that ICE Clear Europe management determine to be significant would be reported to the F&O Product Risk Committee as part of the regular reporting package. In evaluating the significance of the change, the Clearing House would consider the reason for the shortfall margin changes, and whether the changes were due to leverage, change in member capital allowance or other causes outside than the normal course of business.

Models supporting the F&O Margin Shortfall Policy objectives would be subject to an annual independent validation and governance oversight in accordance with the ICE Clear Europe Model Risk Governance Framework. The Policy Owner would be responsible for ensuring the policy remains up-to-date with the support of the Risk Oversight Department. The policy would be reviewed annually by the F&O Risk Committee and Board Risk Committee in accordance with their terms of reference. At a minimum, any material policy changes would need to be discussed by the Executive Risk Committee and approved by the ICE Clear Europe Board on the advice of the F&O Risk Committee and the Board Risk Committee prior to implementation. The proposed F&O Margin Shortfall Policy would further set out a detailed escalation and notification protocol based on risk appetite metrics. Routine reporting and analysis demonstrating enforcement and adherence of the F&O Margin Shortfall Policy would need to be submitted to the F&O Risk Committee and where necessary, to the BRC, in a timely and appropriate manner.

The policy also addresses escalation and reporting of deviations from the policy.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act [10] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [11] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the

[6] Capital for this purpose would be as set out in the Clearing Member's financial statements provided to ICE Clear Europe in accordance with Rules 205 and 206.

[7] For energy contracts carried in a house or affiliate account, the OM requirement used for the calculation would include the additional Clearing Member EMIR charge applicable to such accounts based on a two-day margin period of risk. For customer accounts, the OM requirement used for the calculation would exclude any additional margin collected under the margin framework.

[8] For Sponsored Principal and Individually Segregated Margin-flow Co-Mingled Accounts, the OM requirement for the Clearing Member would be the sum of each of the individual client's net OM requirements.

[9] The list of permitted cover can be found in the following link: *https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf.*

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The new F&O Margin Shortfall Policy is intended to protect the Clearing House against an uncovered loss resulting from an F&O Clearing Member default, by limiting the OM requirement of Clearing Members as compared to their capital and imposing an additional shortfall margin requirement to cover potential stress losses in excess of the stress allowance level. The new policy thus would promote the risk management of the Clearing House and accordingly the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management would also generally be consistent with the protection of investors and the public interest in the safe operation of the Clearing House. In ICE Clear Europe's view, the policy would not affect the safeguarding of funds and securities in the custody or control of the Clearing House or for which it is responsible, as the changes would not affect the way in which margin provided is held or managed for Clearing Members by ICE Clear Europe. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[12]

In addition, Rule 17Ad–22(e)(6)(i)[13] requires that a clearing agency cover its credit exposures to its participants by establishing a risk-based margin system that, among other matters, produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. The proposed F&O Margin Shortfall Policy would monitor the ratio of each Clearing Member's total OM requirement to capital to ensure that it remain within appropriate limits for the protection of the Clearing House from Clearing Member default. The proposed policy would also use the shortfall margin to limit a Clearing Member's uncovered stress losses by requiring additional collateralization of stress losses over the Clearing House's risk tolerance. The policy thus would enhance the ability of the Clearing House to tailor margin requirements to the risks posed by the Clearing Member, in light of its capitalization. In ICE Clear Europe's view, the proposed F&O Margin Shortfall Policy is thus consistent with the requirements of Rule 17Ad–22(e)(6).[14]

Rule 17Ad–22(e)(2)[15] requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. In compliance with this requirement, the proposed F&O Margin Shortfall Policy would explain the responsibility of the policy owner and the escalation and notification protocols. It would also require material changes to the policy discussed by the Executive Risk Committee and approved by the Board on the advice of the F&O Risk Committee and the Board Risk Committee prior to implementation. It would further set out reporting requirements. As such, the new F&O Margin Shortfall Policy is in compliance with Rule 17Ad–22(e)(2).[16]

Rule 17Ad–22(e)(6)(vii)[17] further requires that each covered clearing agency establish written policies and procedures that provide for a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework. The models underlying the F&O Margin Shortfall Policy would be subject to review, validation and oversight in accordance with the Model Risk Governance Framework. As a result, In ICE Clear Europe's view, the proposed policy is consistent with Rule 17Ad–22(e)(6)(vii).[18]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted further strengthen ICE Clear Europe risk management procedures and ensure that ICE Clear Europe appropriately monitors and limits risks relating to Clearing Members' capital to margin ratio and uncovered stress losses. The proposed F&O Margin Shortfall Policy may result in increased collateral, capital or other requirements for F&O Clearing Member, which would increase the costs of clearing for those Clearing Members. However, ICE Clear Europe believes that any such additional cost is tailored to the capital and risk presented by the particular F&O Clearing Member, and is appropriate to take into account that risk, consistent with the provisions of the Act and Commission regulations relating to margin requirements and methodologies as discussed above. The F&O Margin Shortfall Policy will apply to all F&O Clearing Members, and such Clearing Members will be able to manage their positions to limit potential additional requirements if they so choose. ICE Clear Europe does not believe that the new F&O Margin Shortfall Policy will otherwise impact competition among Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. As a result, ICE Clear Europe believes that any impact on competition is appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments 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 has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and paragraph (f) of Rule 19b–4[20] 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

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(6)(i).

[14] 17 CFR 240.17Ad–22(e)(6)(i).

[15] 17 CFR 240.17 Ad–22(e)(2). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(2) Provide for governance arrangements that:

(i) Are clear and transparent

(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;

(iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants;

(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities;

(v) Specify clear and direct lines of responsibility; and

(vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.''

[16] 17 CFR 240.17 Ad–22(e)(2).

[17] 17 CFR 240.17Ad–22(e)(6)(vii).

[18] 17 CFR 240.17Ad–22(e)(6)(vii).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–005 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–ICEEU–2019–005. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–005 and should be submittedon or before April 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06432 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 6h–1, SEC File No. 270–497, OMB Control No. 3235–0555

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 6h–1 (17 CFR 240.6h–1) under the Securities Exchange Act of 1934, as amended (''Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) Trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security, or trading in 50% or more of the underlying securities, is halted on the listing market.

It is estimated that approximately 1 respondent, consisting of a designated contract market not already registered as a national securities exchange under Section 6(g) of the Act that seeks to list or trade security futures products, will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 10 hours. At an average internal cost per hour of approximately $401, the resultant total internal cost of compliance for the respondents is $4,010 per year (1 respondent × 10 hours/respondent × $401/hour).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 28, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06442 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85438; File No. SR–PEARL–2019–10]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami PEARL, LLC To Amend Exchange Rule 404, Series of Option Contracts Open for Trading

March 28, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act

[21] 17 CFR 200.30–3(a)(12).

of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2019, Miami PEARL, LLC (''MIAX PEARL'' 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 404, Series of Option Contracts Open for Trading, to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 404, Series of Option Contracts Open for Trading, to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. This is a competitive proposal based on a filing submitted by Cboe Exchange, Inc. (''Cboe'') to the Commission.[3]

Currently, under Exchange Rule 404(e), when faced with unusual market conditions, the Exchange may add new series of options on an individual stock until the close of trading on the second business day prior to expiration. In 2013, the Options Clearing Corporation (''OCC'') implemented a transition for standard option monthly expiration processing from Saturday to Friday. Accordingly, the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX Options''), along with other exchanges, updated its rules to reflect the OCC change, referencing Friday expiration dates to replace Saturday expiration dates for all options expiring on or after February 1, 2015.[4] MIAX Options also replaced any historic references to expiration dates with Friday expiration. At that time, other exchanges amended their rules to differentiate between Friday and Saturday or non-business day expirations during the transitional period. Other exchanges specified that additional series of individual stock options may be added during unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (*i.e.,* Thursday for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day until the close of trading on the second business day prior to expiration (*i.e.,* Thursday for Saturday expirations).[5] Consistent with the OCC initiative and industry-wide definition, the Exchange does not list series of option contracts with Saturday or non-business day expirations.[6] The Exchange thus proposes to amend Rule 404 to allow specifically for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions in line with other exchanges' timing requirements for listing series of options prior to expiration.

The Exchange seeks to introduce this proposed change to Exchange Rule 404 to create a uniform expiration date across exchanges for standard options on listed classes. The Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion, reducing the likelihood of rule violations due to discrepant industry rules, and by allowing for a more orderly market. In addition, the Exchange believes that keeping the proposed rule consistent with other exchange rules will foster better cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry-wide.

The proposed rule change is similar to the filing submitted by the Exchange's affiliate, MIAX Options.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that keeping its rules consistent with those of other exchanges and industry practices will protect all participants in the market by eliminating confusion, thus, preventing investor vulnerability to violating different exchange rules. Additionally, the proposed change will foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85205 (February 27, 2019), 84 FR 7949 (March 5, 2019) (SR–CBOE–2019–013).

[4] *See* MIAX PEARL Chapter VII, incorporating by reference MIAX Options Rule 700, which changed the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. *See also* Securities Exchange Act Release No. 69996 (July 17, 2013), 78 FR 44183 (July 23, 2013) (SR–MIAX–2013–32).

[5] *See* Securities Exchange Act Release Nos. 70900 (November 19, 2013), 78 FR 70382 (November 25, 2013) (SR–ISE–2013–58); 70746 (October 23, 2013), 78 FR 64563 (October 29, 2013) (SR–BX–2013–055); 69659 (May 29, 2013), 78 FR 33461 (June 4, 2013) (SR–MIAX–2013–22).

[6] *See supra* note 4.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

facilitating transactions in securities by aligning the timing of series of options listing during unusual market conditions to be consistent industry-wide. Further, as the industry-wide transition from Saturday (and non-business day) expiration dates to Friday (or other business days) expiration dates was successful, the Exchange believes the proposed rule change will remove a discrepant industry impediment and allow for a more orderly market by permitting all options markets, including the clearing agencies, to have the same expiration date for series of options listed during periods of unusual market conditions. The proposed rule change also perfects the mechanism of a free and open market by allowing for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration. Finally, the proposed rule change does not permit unfair discrimination between any Member as it is applies to all Members equally.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the proposal previously filed by Cboe with the Commission.[9] The proposed rule change will allow for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration.

The Exchange also believes the proposed rule change will not impose any significant burden on competition. The proposed rule change has no impact on intramarket competition, as it will apply equally to all Members. Moreover, the proposed rule has no impact on intermarket competition, as it is a competitive response to proposals previously filed by Cboe with the Commission.[10] The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition by allowing the Exchange to better align listed series of options with prices near expiration, and with expiration dates of other exchanges.

[9] *See supra* note 3.

[10] *See supra* note 3.

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 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] 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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it is substantially similar in all material respects to a previous CBOE filing,[15] and does not raise any new or novel issues. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 3.

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number *SR–PEARL–2019–10.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR–PEARL–2019–10 and should be submitted on or before April 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06422 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85442; File No. SR–MIAX–2019–15]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 404, Series of Option Contracts Open for Trading

March 28, 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 21, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 404, Series of Option Contracts Open for Trading, to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 404, Series of Option Contracts Open for Trading, to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. This is a competitive proposal based on a filing submitted by Cboe Exchange, Inc. (''Cboe'') to the Commission.[3]

Currently, under Exchange Rule 404(e), when faced with unusual market conditions, the Exchange may add new series of options on an individual stock until the close of trading on the second business day prior to expiration. In 2013, the Options Clearing Corporation (''OCC'') implemented a transition for standard option monthly expiration processing from Saturday to Friday. Accordingly, the Exchange, along with other exchanges, updated its rules to reflect the OCC change, referencing Friday expiration dates to replace Saturday expiration dates for all options expiring on or after February 1, 2015.[4] The Exchange also replaced any historic references to expiration dates with Friday expiration. At that time, other exchanges amended their rules to differentiate between Friday and Saturday or non-business day expirations during the transitional period. Other exchanges specified that additional series of individual stock options may be added during unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (*i.e.,* Thursday for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day until the close of trading on the second business day prior to expiration (*i.e.,* Thursday for Saturday expirations).[5] Consistent with the OCC initiative and industry-wide definition, the Exchange currently no longer lists series of option contracts with Saturday or non-business day expirations. The Exchange thus proposes to amend Rule 404 to allow specifically for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions in line with other exchanges' timing requirements for listing series of options prior to expiration.

The Exchange seeks to introduce this proposed change to Exchange Rule 404 to create a uniform expiration date across exchanges for standard options on listed classes. The Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion, reducing the likelihood of rule violations due to discrepant industry rules, and by allowing for a more orderly market. In addition, the Exchange believes that keeping the proposed rule consistent with other exchange rules will foster better cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry-wide.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market

[3] *See* Securities Exchange Act Release No. 85205 (February 27, 2019), 84 FR 7949 (March 5, 2019) (SR–CBOE–2019–013).

[4] *See* Securities Exchange Act Release No. 69996 (July 17, 2013), 78 FR 44183 (July 23, 2013) (SR–MIAX–2013–32).

[5] *See* Securities Exchange Act Release Nos. 70900 (November 19, 2013), 78 FR 70382 (November 25, 2013) (SR–ISE–2013–58); 70746 (October 23, 2013), 78 FR 64563 (October 29, 2013)(SR–BX–2013–055); and 69659 (May 29, 2013), 78 FR 33461 (June 4, 2013) (SR–MIAX–2013–22).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that keeping its rules consistent with those of other exchanges and industry practices will protect all participants in the market by eliminating confusion, thus, preventing investor vulnerability to violating different exchange rules. Additionally, the proposed change will foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning the timing of series of options listing during unusual market conditions to be consistent industry-wide. Further, as the industry-wide transition from Saturday (and non-business day) expiration dates to Friday (or other business days) expiration dates was successful, the Exchange believes the proposed rule change will remove a discrepant industry impediment and allow for a more orderly market by permitting all options markets, including the clearing agencies, to have the same expiration date for series of options listed during periods of unusual market conditions. The proposed rule change also perfects the mechanism of a free and open market by allowing for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration. Finally, the proposed rule change does not permit unfair discrimination between any Member as it is applies to all Members equally.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the proposal previously filed by Cboe with the Commission.[8] The proposed rule change will allow for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration.

The Exchange also believes the proposed rule change will not impose any significant burden on competition. The proposed rule change has no impact on intramarket competition, as it will apply equally to all Members. Moreover, the proposed rule has no impact on intermarket competition, as it is a competitive response to the proposal previously filed by Cboe with the Commission.[9] The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition by allowing the Exchange to better align listed series of options with prices near expiration, and with expiration dates of other exchanges.

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 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 pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its 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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it is substantially similar in all material respects to a previous CBOE filing,[14] and does not raise any new or novel issues. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–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–MIAX–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

[8] *See supra* note 3.

[9] *See supra* note 3.

[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)(iii).

[14] *See supra* note 3.

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2019–15* and should be submitted on or before April 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06423 Filed 4–2–19; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2019–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Determination of the rail cost adjustment factor (RCAF) figures for the second quarter of 2019.

SUMMARY: The Board finds that the second quarter 2019 RCAF (Unadjusted) is 1.065, RCAF (Adjusted) is 0.451, and RCAF–5 is 0.422. Comments on the inclusion of the recalculated figures in the RCAF may be submitted by April 18, 2019.

DATES: Comments may be submitted by April 18, 2019. This decision is effective on April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted at *http://www.stb.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238.

[16] 17 CFR 200.30–3(a)(12).

Decided: March 28, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2019–06454 Filed 4–2–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0228]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operations Specifications, Part 129 Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The FAA assesses the information collected and issues operations specifications to foreign air carriers. These operations specifications assure the foreign air carrier's ability to navigate and communicate safely within the U.S. National Airspace System.

DATES: Written comments should be submitted by June 3, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Danuta Pronczuk, FAA, AFS–50, 600 Independence Avenue, 6th Floor, Suite 6W1000, Washington, DC 20597.

By fax: 202–267–6554.

FOR FURTHER INFORMATION CONTACT: Danuta Pronczuk by email at: *danuta.pronczuk@faa.gov;* phone: 202–267–0923.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized 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 this information collection.

OMB Control Number: 2120–0749.

Title: Operations Specifications, Part 129 Application.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The final rule published in 2013, clarified and standardized the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and established standards for amendment, suspension and termination of those operations specifications. The final rule also applied to foreign air carriers and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This action was necessary to update the process for issuing operations specifications, and it established a regulatory basis for current practices, such as amending, terminating, and suspending operations specifications.

Respondents: Approximately 25 new applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden: 75 hours.

Issued in Washington, DC on March 26, 2019.

Robert C. Carty,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2019–06398 Filed 4–2–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0072; Notice 2]

Jaguar Land Rover North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Jaguar Land Rover North America, LLC (JLR), on behalf of Jaguar Land Rover Limited, has determined that certain model year (MY) 2012–2018 Jaguar motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems.* JLR filed a

noncompliance report dated June 22, 2017. JLR also petitioned NHTSA on July 20, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. For the reasons stated below, NHTSA grants the petition.

FOR FURTHER INFORMATION CONTACT: John Finneran, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5289, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

JLR, on behalf of Jaguar Land Rover Limited, has determined that certain MY 2012–2018 Jaguar motor vehicles do not fully comply with FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). JLR filed a noncompliance report dated June 22, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* JLR also petitioned NHTSA on July 20, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 1, 2017, in the **Federal Register** (82 FR 41677). One comment was received. To view the petition, any comments, and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2017–0072.''

II. Vehicles Involved

Approximately 126,127 of the following Jaguar motor vehicles, manufactured between February 8, 2012, and June 19, 2017, are potentially involved:

- 2017–2018 Jaguar F-Pace
- 2017–2018 Jaguar XE
- 2017–2018 Jaguar XF
- 2014–2018 Jaguar F–TYPE
- 2013–2017 Jaguar XJ
- 2012–2015 Jaguar XK

III. Noncompliance

JLR explains that the noncompliance is that the brake fluid warning statement label on the subject vehicles is not permanently affixed as required by paragraph S5.4.3(a) of FMVSS No. 135. Specifically, JLR installed a label that fits over the neck of the brake fluid reservoir that can be removed when the brake fluid reservoir cap is removed.

IV. Rule Requirements

Paragraph S5.4.3(a) of FMVSS No. 135 titled ''Reservoir Labeling'' includes the requirements relevant to this petition:

- Each vehicle equipped with hydraulic brakes shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (⅛ inch) high:

''WARNING: Clean filler cap before removing. Use only ____fluid from a sealed container.'' (inserting the recommended type of brake fluid as specified in 49 CFR 571.116, *e.g.,* ''DOT 3.'').

- Permanently affixed, engraved or embossed.

V. Summary of JLR's Petition

As background, in JLR's noncompliance report, JLR stated that a Product Safety and Compliance Committee (PSCC) Investigation was opened on June 6, 2017, following communication from a safety compliance engineer from NHTSA's Office of Vehicle Safety Compliance. The communication highlighted a concern that the brake reservoir label was not permanently affixed to the brake fluid reservoir as required by FMVSS No. 135, *Light Vehicle Brake Systems.* On June 13, 2017, JLR's PSCC concluded that the concern should be forwarded to the Recall Determination Committee (RDC). The RDC reviewed all information on June 15, 2017, and concluded that the issue represented a compliance concern related to FMVSS No. 135, Light Vehicle Brake Systems, but that the condition was considered inconsequential and requested that a petition for decision of inconsequential noncompliance be filed with NHTSA.

JLR described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, JLR submitted the following reasoning:

1. The installed label will not fall off or become displaced during normal vehicle use or operation.
2. The installed label provides mechanical resistance to being removed.
3. There is interference between the installed label and reservoir filler neck such that a minimum of 2mm interference exists.
4. The installed label is only able to be removed when the brake fluid reservoir cap is displaced which, based on routine maintenance schedules, is once every 3 years in service.
5. The filler cap shows clearly the specification of brake fluid required.
6. The filler cap provides clear symbols including one for caution and one referring to handbook instructions. The owner's handbook descriptions indicate the proper brake fluid specification to be used in the vehicle.
7. The installed cap conforms to the requirements of ISO9128:2006 which is a requirement of UN–ECE Regulation 13 and 13h. NHTSA has previously granted petitions to accept ISO symbols in the absence of FMVSS labeling:

a. Jaguar Land Rover petition regarding controls and displays including brake system-related telltales (78 FR 66101–03).

b. Ford petition regarding controls and displays including brake system-related telltales (78 FR 69931–32)

c. Hyundai petition regarding lower anchorage identification (73 FR 38290–91).

8. JLR has not received any customer complaints on this issue.
9. There have been no accidents or injuries as a result of this issue.
10. Vehicle production has been corrected to fully conform to FMVSS No. 135, *Light Vehicle Brake Systems,* S5.4.3(a) with a new filler cap.

JLR concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comments

Comments were received from one individual who was opposed to NHTSA granting JLR's petition and provided a wide-ranging list of objections, many of which were not directly related to the petition issue of a non-permanent brake master cylinder reservoir label. Applicable comments included the following:

1. Brake fluid is a toxic, flammable and combustible liquid that requires a permanently affixed warning label;
2. Jaguar cannot say with 100% certainty or any probability that the label will not fall off or be displaced during vehicle use or operation;
3. Subsequent purchasers will be exposed to known and undisclosed danger;
4. The vehicles have no routine maintenance schedule and are brought in to be serviced within days or months of purchase;
5. The filler cap alone does not adequately serve as a warning label and is not a permanent fixture;
6. A filler cap can be easily removed and replaced with any other cap that has the same measurements;
7. Jaguar has received customer complaints which have not been provided to NHTSA; and

8. Jaguar cannot accurately assert that there has been no accidents or injuries regarding the issue in question.

VII. NHTSA's Analysis

NHTSA has evaluated the merits of the inconsequential petition submitted by JLR and has considered the applicable comments received from the public, and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, paragraph S5.4.3 of FMVSS No. 135 requires that each vehicle equipped with hydraulic brakes have a brake fluid warning statement with specific language that is (a) permanently affixed, engraved or embossed, (b) located so as to be visible by direct view either on or within 100 mm of the brake fluid reservoir filler plug or cap, and is (c) a color that contrasts with its background if it is not engraved or embossed. JLR in its submittal of its Part 573 acknowledged that the brake fluid warning label is not permanently affixed as it can be removed once the filler cap is removed. However, the warning statement wording on the label is correct, and requirements (b) and (c) above are met.

NHTSA has concluded that the noncompliance is inconsequential based on two principal reasons: (1) Although the label can be removed, the chance of it becoming detached is highly improbable, and (2) in the unlikely event of label displacement, the required information specified on the label is available from other locations or sources. These reasons are further explained below:

Addressing item (1) above, the installed label appears to be made of a durable plastic material which is positioned on the filler neck and is retained by the filler cap. During normal vehicle use and operation, the filler cap remains attached to the reservoir, and the label is effectively permanently affixed. The reservoir filler cap and label are positioned within the engine compartment and in many cases, further sealed below plastic trim. Thus, to access and remove the label requires intentional actions by an owner or service technician by hood release, secondary hood release, trim removal, cap removal and finally pulling the label itself off. This multi-step process will not occur inadvertently.

JLR explains that the routine maintenance schedule for the brake fluid is once every 3 years in service. Unless a brake fluid issue arises during the intervening time period, the cap should remain affixed and the label in place. In addition, FMVSS No. 135 S5.4.4 requires the brake fluid reservoir to be so constructed that the level of fluid can be checked without the need for the reservoir to be opened. Thus, the frequency with which the cap will be removed and therefore the time frame in which the label can be removed is exceedingly limited. We further note that the removal of the brake filler cap for fluid addition, replacement or flush is predominately performed by trained service technicians, not vehicle owners, who will have no reason to remove a warning tag and are knowledgeable on precautions when dealing with brake fluid.

Addressing item (2) above, the S5.4.3 warning statement that is required to be on or near the reservoir filler opening has four essential components as listed below:

1. The word ''Warning''
2. The statement ''Clean filler cap before removing''
3. Fluid specification ie., ''DOT 4'' fluid, and
4. The statement ''Brake fluid from a sealed container''.

In the unlikely event the label is removed, these four specified items contained on the warning label are available from other locations or sources. The filler cap itself has four embossed yellow symbols on a black background. One symbol is for the brake system, indicating that the reservoir is brake related. The second symbol is an exclamation point within a triangle, generally recognized as a pictorial equivalent to the word ''warning,'' and the third is a symbol representing the owner's manual, implying that the document should be reviewed prior to tampering with the reservoir system. The owner's manual provides instructions for topping off the brake fluid, stating ''always use the brake fluid with the correct specifications, only use new fluid from an airtight container, and to clean the brake fluid filler cap before removing . . .'' Thus, the reservoir cap symbols pictorially warn and instruct that prior to cap removal, the owner's manual should be reviewed where all the pertinent maintenance information is described and is redundant to the label statements. Therefore, in the unlikely situation where the label has been removed, the technician is still warned and guided as to the proper procedures for working with the master cylinder reservoir opening. The fourth cap marking is ''DOT 4,'' which is redundant to the label listing and is arguably the most important caution, as the fluid used is critical to the performance and durability of the brake system. Even without the label, the appropriate fluid is clearly indicated.

Furthermore, as indicated by JLR there have been no customer complaints or accidents as a result of this issue. As the noncompliance has existed for some models since 2012, a significant amount of time has elapsed in which the problem could have arisen, yet it has not been noted by any complaints or implicated in any accidents.

Although the S5.4.3 warning label is not technically permanently affixed as required in S5.4.3 (a) the noncompliance is inconsequential to motor vehicle safety because the likelihood of the tag being displaced under normal vehicle operation and usage is exceedingly small, and all the information required by S5.4.3 even in the absence of the label is detailed in the owner's manual which is pictorially referenced by symbols on the cap itself. Lastly, it is likely that only trained service technicians will remove the cap leaving the label in place, and the critical fluid specification ''DOT 4'' is both on the label and the cap.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that JLR has met its burden of persuasion that the FMVSS No. 135 noncompliance is inconsequential to motor vehicle safety. Accordingly, JLR's petition is hereby granted and JLR is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that JLR no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after JLR notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–06478 Filed 4–2–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (''Committee'') will convene a meeting on Thursday, April 18, 2019, in the Cash Room, Room 2121, 1500 Pennsylvania Ave. NW, Washington, DC 20220, from 1:30 p.m.–4:30 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, April 18, 2019, from 1:30 p.m.–4:30 p.m. Eastern Time.

ADDRESSES: The Committee meeting will be held in Room 2121 (Cash Room), Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/s6q8dd* and fill out a secure online registration form. A valid email address will be required to complete online registration. (Note: Online registration will close at 5:00 p.m. Eastern Time on Thursday, April 11, 2019.)

2. Contact the Federal Insurance Office at (202) 622–3220, by 5:00 p.m. Eastern Time on Thursday, April 11, 2019, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0316, or *mariam.harvey@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *faci@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its website *https://www.treasury.gov/initiatives/fio/Pages/faci.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is the first periodic meeting of the Committee in 2019. In this meeting, the Committee will address the use of subcommittees to fulfill the Committee's mandate, identify the Committee's priorities for 2019, and receive an update from the Federal Insurance Office.

Dated: March 27, 2019.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2019–06401 Filed 4–2–19; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 64 April 3, 2019

Part II

The President

Permit of March 29, 2019—Authorizing TransCanada Keystone Pipeline, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada

Federal Register
Vol. 84, No. 64
Wednesday, April 3, 2019

Presidential Documents

Title 3—

The President

Presidential Permit of March 29, 2019

Authorizing TransCanada Keystone Pipeline, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America, I hereby grant permission, subject to the conditions herein set forth, to TransCanada Keystone Pipeline, L.P. (hereinafter referred to as the ''permittee''), to construct, connect, operate, and maintain pipeline facilities at the international border of the United States and Canada at Phillips County, Montana, for the import of oil from Canada to the United States. The permittee is a limited partnership organized under the laws of the State of Delaware, owned by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada.

This permit supersedes the Presidential permit issued to the permittee, dated March 23, 2017. For the avoidance of doubt, I hereby revoke that March 23, 2017, permit. Furthermore, this permit grants the permission described in the previous paragraph and revokes the March 23, 2017, permit notwithstanding Executive Order 13337 of April 30, 2004 (Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States) and the Presidential Memorandum of January 24, 2017 (Presidential Memorandum Regarding Construction of the Keystone XL Pipeline).

The term ''Facilities,'' as used in this permit, means the portion in the United States of the international pipeline project associated with the permittee's application for a Presidential permit filed on May 4, 2012, and resubmitted on January 26, 2017, and any land, structures, installations, or equipment appurtenant thereto.

The term ''Border facilities,'' as used in this permit, means those parts of the Facilities consisting of a 36-inch diameter pipeline extending from the international border between the United States and Canada at a point in Phillips County, Montana, to and including the first mainline shut-off valve in the United States located approximately 1.2 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. (1) The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. This permit may be terminated, revoked, or amended at any time at the sole discretion of the President of the United States (the ''President''), with or without advice provided by any executive department or agency (agency). The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit until the permittee has notified the President or his designee of such change and the President has approved the change.

(2) The construction, connection, operation, and maintenance of the Facilities (not including the route) shall be, in all material respects and as consistent with applicable law, as described in the permittee's application for

a Presidential permit filed on May 4, 2012, and resubmitted on January 26, 2017.

Article 2. The standards for, and the manner of, construction, connection, operation, and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. Consistent with Article 10, this permit shall remain in effect until terminated, revoked, or amended by the President.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct that possession of such Border facilities be taken—or that they be removed or that other action be taken—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States shall exercise the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, shall be immediately communicated in writing to the President or his designee, and shall include information identifying the transferee. Notwithstanding any transfer of ownership or control of the Border facilities, or any part thereof, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

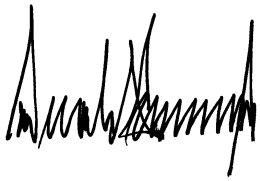
Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 9. The permittee shall provide written notice to the President or his designee at the time that the construction authorized by this permit begins, at such time as such construction is completed, interrupted, or discontinued, and at other times as may be requested by the President.

Article 10. This permit shall expire 5 years from the date of its issuance if the permittee has not commenced construction of the Border facilities by that date.

Article 11. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person.

IN WITNESS WHEREOF, I, DONALD J. TRUMP, President of the United States of America, have hereunto set my hand this twenty-ninth day of March, 2019, in the City of Washington, District of Columbia.



[FR Doc. 2019–06654
Filed 4–2–19; 11:15 am]
Billing code 3295–F9–P

Reader Aids

Federal Register

Vol. 84, No. 64

Wednesday, April 3, 2019

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

12047–12482 1
12483–12872 2
12873–13104 3

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
910 12047

3 CFR
Executive Orders:
13856 (Superseded by EO 13866) 12853
13866 12853
Administrative Orders:
Notices:
Notices of April 1, 2019 12871
Memorandums:
Memorandum of March 27, 2019 12479
Memorandum of March 28, 2019 12867
Permit: March 29, 2019 13101

5 CFR
337 12873
Proposed Rules:
1630 12954

7 CFR
1000 12483

9 CFR
Proposed Rules:
92 12955

10 CFR
Ch. I 12483
50 12876
Proposed Rules:
430 ..... 12143, 12527
431 ..... 12527, 12528

12 CFR
Ch. II 12049
Proposed Rules:
611 12959
615 12959
621 12959

13 CFR
107 12059
120 12059
142 12059
146 12059

14 CFR
39 ..... 12484, 12486, 12877, 12880
91 12062
95 12488
Proposed Rules:
21 12529
39 ..... 12143, 12530, 12532
71 12146

17 CFR
Ch. I 12074, 12908
1 ..... 12450, 12882
23 ..... 12065, 12894
202 12906
229 12674
230 12674
232 ..... 12073 , 12674
239 12674
240 12674
249 12674
270 12674
274 12674
275 12674

20 CFR
655 12380

21 CFR
73 12081
112 12490
117 12490
507 12490
510 12491
520 12491
522 12491
524 12491
528 12491
556 12491
558 12491
600 12505
806 12083
866 12083
888 12088
Proposed Rules:
15 ..... 12966, 12969
16 12740
165 12975
610 12534
1000 12147
1002 12147
1010 12147
1020 12147
1040 12147
1050 12147
1107 12740

26 CFR
Proposed Rules:
1 12169

27 CFR
478 12093
479 12093
555 12095

30 CFR
Proposed Rules:
935 12979
938 ..... 12981, 12983
948 12984

31 CFR

34 12929

32 CFR

54 12932
269 12098

Proposed Rules:

775 12170

33 CFR

100 12099
105 12102
165 ..... 12120, 12933

Proposed Rules:

100 12178
165 12538

38 CFR

1 12122

40 CFR

52 ..... 12508, 12511
180 ..... 12513, 12516, 12520
271 ..... 12936, 12937

Proposed Rules:

260 12539
261 12539
266 12539

42 CFR

447 12130

Proposed Rules:

600 12552

44 CFR

64 12938

47 CFR

Proposed Rules:

1 ..... 12566, 12987
2 12987
20 12987
27 12987
90 12987

48 CFR

202 12137
204 12138
216 12139
225 12140
244 12140
252 ..... 12138, 12140, 12141

Proposed Rules:

202 12179
204 12182
215 12182
216 12179
217 12179
219 12187
225 12179
226 12182
234 12179
235 12179
252 ..... 12182, 12187
1603 12569
1652 12569

49 CFR

1002 12940
1012 12940
1104 12940
1110 12940
1111 12940
1113 12940
1130 12940
1132 12940
1150 12940
1152 12940
1155 12940
1182 12940
1244 12940
1312 12940
1313 12940

50 CFR

92 12946
635 12524
679 12952

Proposed Rules:

217 12330
622 12573

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 25, 2019

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.