



FEDERAL REGISTER

Vol. 84

Thursday,

No. 95

May 16, 2019

Pages 22049–22326

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.gpo.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, gpoousthelp.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>.



Contents

Federal Register

Vol. 84, No. 95

Thursday, May 16, 2019

Agriculture Department

See National Institute of Food and Agriculture

See Rural Housing Service

See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

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

Appeals of Background Checks, 2019–10092

Limited Permittee Transaction Report, 2019–10093

Transactions Among Licensees/Permittees, Limited, 2019–10091

Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10135

Centers for Disease Control and Prevention

NOTICES

Meetings:

Board of Scientific Counselors, National Center for Injury Prevention and Control, 2019–10143

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 2019–10164

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10167

Civil Rights Commission

NOTICES

Meetings:

Arkansas Advisory Committee, 2019–10179

Colorado Advisory Committee, 2019–10180

Maine Advisory Committee, 2019–10178

Nebraska Advisory Committee, 2019–10182

Rhode Island Advisory Committee, 2019–10181

Coast Guard

PROPOSED RULES

Special Local Regulation:

Choptank River, Cambridge, MD, 2019–10140

NOTICES

Imposition of Conditions of Entry for Certain Vessels Arriving to the United States from the Republic of Djibouti, 2019–10153

Commerce Department

See Economic Development Administration

See Industry and Security Bureau

See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

PROPOSED RULES

Derivatives Clearing Organization General Provisions and Core Principles, 2019–09025

Defense Department

See Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10141

Meetings:

Defense Science Board, 2019–10161

Reserve Forces Policy Board, 2019–10152

Economic Development Administration

NOTICES

Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance, 2019–10108

Education Department

NOTICES

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

Higher Education Act Title II Report Cards on State

Teacher Credentialing and Preparation, 2019–10104

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

New Mexico; Approval of Revised Statutes; Error Correction, 2019–09942

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Illinois; State Board and Infrastructure State

Implementation Plan Requirements, 2019–09919

Kentucky; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO₂ Standard, 2019–10184

Massachusetts; Boston Metropolitan Area, Lowell, Springfield, Waltham, and Worcester Second 10-Year Carbon Monoxide Limited Maintenance Plan, 2019–09978

Minnesota; Flint Hills Sulfur Dioxide Revision, 2019–09921

Missouri Air Quality Implementation Plans; Redesignation of the Missouri Portion of the St. Louis-St. Charles-Farmington, MO–IL 2012 PM_{2.5} Unclassifiable Area, 2019–10189

Texas; Houston-Galveston-Brazoria Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; Section 185 Fee Program, 2019–09943

NOTICES

Meetings:

Pesticides; Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides, 2019–10177

Federal Aviation Administration

PROPOSED RULES

Airworthiness Directives:

Airbus SAS Airplanes, 2019–09743

Amendment of Class E Airspace:

Forest City, IA, 2019–09947

Federal Emergency Management Agency

RULES

Suspension of Community Eligibility, 2019–10190

NOTICES

Major Disaster and Related Determinations:

Alabama, 2019–10198

Kentucky, 2019–10201

Mississippi, 2019–10204

Tennessee, 2019–10200

The Sac and Fox Tribe of the Mississippi in Iowa, 2019–10195

Major Disaster Declaration:

Mississippi; Amendment No. 1, 2019–10203

Ohio; Amendment No. 1, 2019–10202

Federal Maritime Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10145

Complaint:

Muhammad Rana v. Michelle Franklin, D.B.A. The Right Move, Inc., 2019–10151

Federal Reserve System**NOTICES**

Potential Modifications to the Federal Reserve Banks'

National Settlement Service and Fedwire Funds Service to Support Enhancements to the Same-Day

ACH Service and Corresponding Changes to the

Federal Reserve Policy on Payment System Risk, 2019–09949

Food and Drug Administration**NOTICES**

Guidance:

Product-Specific Guidances, 2019–10165

Foreign Assets Control Office**NOTICES**

Blocking or Unblocking of Persons and Properties, 2019–10134

Health and Human Services Department

See Centers for Disease Control and Prevention

See Children and Families Administration

See Food and Drug Administration

See Indian Health Service

See National Institutes of Health

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10107

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

Indian Health Service**NOTICES**

Funding Opportunity:

American Indians into Medicine, 2019–10096

American Indians into Nursing, 2019–10097

American Indians into Psychology, 2019–10098

Industry and Security Bureau**NOTICES**

Requests for Nominations:

Technical Advisory Committees, 2019–10122

Institute of Museum and Library Services**NOTICES**

Meetings:

National Museum and Library Services Board, 2019–10194

Interior Department

See Land Management Bureau

See National Park Service

See Reclamation Bureau

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain LED Packages Containing PFS Phosphor and Products Containing Same, 2019–10196

Certain Luxury Vinyl Tile and Components Thereof, 2019–10111

Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof, 2019–10112

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

See National Institute of Corrections

NOTICES

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

Survey of Law Enforcement Personnel in Schools, 2019–10137

Proposed Consent Decree:

Clean Air Act, 2019–10106, 2019–10159, 2019–10160

Land Management Bureau**NOTICES**

Intent to Establish Recreation Fees:

Public Lands in Clackamas County, OR, 2019–10150

National Endowment for the Arts**NOTICES**

Meetings:

Arts Advisory Panel, 2019–10133

National Foundation on the Arts and the Humanities

See Institute of Museum and Library Services

See National Endowment for the Arts

National Institute of Corrections**NOTICES**

Meetings:

Advisory Board, 2019–10132

National Institute of Food and Agriculture**NOTICES**

Designation as a Non Land Grant College of Agriculture, 2019–10105

National Institutes of Health**NOTICES**

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

Request for Human Embryonic Stem Cell Line to be approved for Use in NIH Funded Research, 2019–10154

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
 Gulf of Mexico Greater Amberjack; 2019 Commercial Accountability Measure and Closure, 2019–10131
 List of Fisheries for 2019, 2019–10139

PROPOSED RULES

Fisheries of the Northeastern United States:
 Northeast Multispecies Fishery; Fishing Year 2019
 Recreational Management Measures, C1–2019–09685

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10163
 Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Input of Value and Use of NOAA Tropical Cyclone Graphical and Text Products in Decision-Making, 2019–10100
 Environmental Impact Statements; Availability, etc.:
 Atlantic Highly Migratory Species; Spatial Fisheries Management, 2019–10193
 Meetings:
 Pacific Fishery Management Council, 2019–10158
 Science Advisory Board, 2019–10109
 Western Pacific Fishery Management Council, 2019–10157
 Permits:
 Marine Mammals and Endangered Species, 2019–10162

National Park Service**NOTICES**

National Register of Historic Places:
 Pending Nominations and Related Actions, 2019–10168

Nuclear Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Request for Access Authorization, 2019–10099
 Request for Visit, 2019–10095

Postal Service**NOTICES**

Product Change:
 Priority Mail Express Negotiated Service Agreement, 2019–10101
 Priority Mail Express, Priority Mail, and First-Class Package Service Negotiated Service Agreement, 2019–10102

Presidential Documents**EXECUTIVE ORDERS**

Asian Americans and Pacific Islanders; Economic Empowerment Initiative (EO 13872), 2019–10398

Reclamation Bureau**NOTICES**

Meetings:
 Colorado River Basin Salinity Control Advisory Council, 2019–10138

Rural Housing Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10156

Rural Utilities Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10192

Securities and Exchange Commission**NOTICES**

Application:
 Collaborative Investment Series Trust and Belpointe Asset Management, LLC, 2019–10103
 Self-Regulatory Organizations; Proposed Rule Changes:
 Cboe BYX Exchange, Inc., 2019–10113, 2019–10120
 Cboe BZX Exchange, Inc., 2019–10119, 2019–10123
 Cboe EDGA Exchange, Inc., 2019–10121
 Cboe EDGX Exchange, Inc., 2019–10117, 2019–10125
 Miami International Securities Exchange, LLC, 2019–10115
 MIAX Emerald, LLC, 2019–10118
 MIAX PEARL, LLC, 2019–10116
 New York Stock Exchange, LLC, 2019–10124
 NYSE Arca, Inc., 2019–10114

Small Business Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2019–10142

State Department**NOTICES**

Determination on Imposition and Waiver of Sanctions under Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003, 2019–10174

Surface Transportation Board**NOTICES**

Acquisition and Operation Exemption:
 San Francisco Bay Railway, LLC; San Francisco Bay Railroad, Inc., 2019–10144
 Trackage Rights Exemption:
 Grand Trunk Western Railroad Co.; Norfolk Southern Railway Co. and Grand Elk Railroad, LLC, 2019–10155

Transportation Department

See Federal Aviation Administration

Treasury Department

See Foreign Assets Control Office

Separate Parts In This Issue**Part II**

Commodity Futures Trading Commission, 2019–09025

Part III

Presidential Documents, 2019–10398

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Executive Orders:**

13515 (Superseded by
EO 13872).....22321
13811 (Superseded by
EO 13872).....22321
13872.....22321

14 CFR**Proposed Rules:**

39.....22075
71.....22078

17 CFR**Proposed Rules:**

1.....22226
39.....22226
140.....22226

33 CFR**Proposed Rules:**

100.....22079

40 CFR

52.....22049

Proposed Rules:

52 (5 documents) 22082,
22084, 22087, 22091, 22093
81 (2 documents) 22093,
22101

44 CFR

64.....22049

50 CFR

229.....22051
622.....22073

Proposed Rules:

648.....22104

Rules and Regulations

Federal Register

Vol. 84, No. 95

Thursday, May 16, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0850; FRL-9993-58-Region 6]

Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a portion of a direct final rule published on February 27, 2019 because relevant adverse comments were received. The rule pertained to EPA approval of revisions to New Mexico's State Implementation Plan (SIP) incorporating updates to SIP-approved New Mexico statutes, as well as removing several provisions from the SIP, as EPA's previous approval of these provisions into the SIP was done in error. In a separate subsequent final rulemaking, EPA will address the portion of the direct final on which relevant adverse comments were received.

DATES: Effective May 16, 2019, the EPA withdraws amendatory instructions 2.b. and 2.h. in the direct final rule published at 84 FR 6334, on February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Jeff Riley, Infrastructure and Ozone Section, 1445 Ross Avenue, Dallas, Texas, Suite 700, Dallas, TX 75202, 214-665-8542, riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA. On February 27, 2019 we published a direct final rule to approve revisions to the New Mexico SIP incorporating updates to SIP-approved New Mexico statutes, as well as removing several provisions from the SIP, as EPA's previous approval of these

provisions into the SIP was done in error (84 FR 6334). The direct final rule was published without prior proposal because we anticipated no adverse comments. We stated in the direct final rule that if we received relevant adverse comments by March 29, 2019, we would publish a timely withdrawal in the **Federal Register**. We received relevant adverse comments regarding the removal of New Mexico Statutes Annotated 1978 (NMSA) sections 74-2-6, 74-2-12, and 74-2-13 and accordingly are withdrawing the portion of the direct final rule on which adverse comments were received. In a separate subsequent final rulemaking we will address the comments received.

List of Subjects in 40 CFR Part 52

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

Dated: May 9, 2019.

David Gray,

Acting Regional Administrator, Region 6.

■ Accordingly, amendatory instructions 2.b. and 2.h., published in the **Federal Register** on February 27, 2019 (84 FR 6334), which were to become effective on May 28, 2019, are withdrawn as of May 16, 2019.

[FR Doc. 2019-09942 Filed 5-15-19; 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-8579]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed

within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain

management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

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

in this final rule have been adequately notified.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region V				
Illinois:				
Beardstown, City of, Cass County	170022	May 9, 1975, Emerg; May 2, 1980, Reg; May 16, 2019, Susp.	May 16, 2019 ...	May 16, 2019.
Cass County, Unincorporated Areas	170810	June 10, 1974, Emerg; November 15, 1985, Reg; May 16, 2019, Susp.	do	Do.
Michigan:				
Bay, Township of, Charlevoix County ...	260796	April 8, 1987, Emerg; September 18, 1987, Reg; May 16, 2019, Susp.	do	Do.
Charlevoix, City of, Charlevoix County	260057	December 13, 1974, Emerg; February 11, 1983, Reg; May 16, 2019, Susp.	do	Do.
Charlevoix, Township of, Charlevoix County.	260790	January 9, 1987, Emerg; September 18, 1987, Reg; May 16, 2019, Susp.	do	Do.
Eveline, Township of, Charlevoix County.	260773	September 8, 1986, Emerg; September 18, 1987, Reg; May 16, 2019, Susp.	do	Do.
Marion, Township of, Charlevoix County	260808	September 15, 1987, Emerg; April 15, 1988, Reg; May 16, 2019, Susp.	do	Do.
South Arm, Township of, Charlevoix County.	260761	May 14, 1986, Emerg; March 18, 1987, Reg; May 16, 2019, Susp.	do	Do.
Region VI				
Arkansas:				
Clarksville, City of, Johnson County	050112	June 26, 1975, Emerg; September 30, 1982, Reg; May 16, 2019, Susp.	do	Do.
Coal Hill, City of, Johnson County	050315	August 6, 1975, Emerg; May 4, 1982, Reg; May 16, 2019, Susp.	do	Do.
Hartman, City of, Johnson County	050251	November 10, 2009, Emerg; November 26, 2010, Reg; May 16, 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
Johnson County, Unincorporated Areas	050441	June 28, 2005, Emerg; August 1, 2008, Reg; May 16, 2019, Susp.	do	Do.
Oklahoma:				
Bethel Acres, Town of, Pottawatomie County.	400346	June 16, 1989, Emerg; December 1, 1989, Reg; May 16, 2019, Susp.	do	Do.
Calvin, Town of, Hughes County	400269	September 7, 1976, Emerg; March 1, 1987, Reg; May 16, 2019, Susp.	do	Do.
Checotah, City of, McIntosh County	400238	August 12, 1977, Emerg; June 19, 1985, Reg; May 16, 2019, Susp.	do	Do.
Citizen Potawatomi Nation, Pottawatomie County.	400553	December 1, 2000, Emerg; September 3, 2010, Reg; May 16, 2019, Susp.	do	Do.
Dustin, Town of, Hughes County	400371	July 9, 1976, Emerg; June 28, 1977, Reg; May 16, 2019, Susp.	do	Do.
Eufaula, City of, McIntosh County	400376	February 14, 1977, Emerg; September 1, 1981, Reg; May 16, 2019, Susp.	do	Do.
Holdenville, City of, Hughes County	400244	November 29, 1976, Emerg; August 15, 1978, Reg; May 16, 2019, Susp.	do	Do.
Hughes County, Unincorporated Areas	400467	August 6, 1988, Emerg; December 1, 1989, Reg; May 16, 2019, Susp.	do	Do.
Kickapoo Tribe of Oklahoma, Lincoln, Oklahoma and Pottawatomie Counties.	400563	February 26, 2002, Emerg; August 19, 2010, Reg; May 16, 2019, Susp.	do	Do.
Lincoln County, Unincorporated Areas	400457	September 28, 1990, Emerg; February 3, 1993, Reg; May 16, 2019, Susp.	do	Do.
McIntosh County, Unincorporated Areas	400166	January 24, 2011, Emerg; N/A, Reg; May 16, 2019, Susp.	do	Do.
McLoud, City of, Pottawatomie County	400398	December 27, 1977, Emerg; October 16, 1987, Reg; May 16, 2019, Susp.	do	Do.
Oklahoma City, City of, Canadian, Cleveland, McClain, Oklahoma and Pottawatomie Counties.	405378	March 19, 1971, Emerg; July 14, 1972, Reg; May 16, 2019, Susp.	do	Do.
Pottawatomie County, Unincorporated Areas.	400496	March 26, 1984, Emerg; June 1, 1988, Reg; May 16, 2019, Susp.	do	Do.
Shawnee, City of, Pottawatomie County	400178	April 2, 1975, Emerg; July 2, 1980, Reg; May 16, 2019, Susp.	do	Do.
Tecumseh, City of, Pottawatomie County.	400179	February 10, 1975, Emerg; July 16, 1980, Reg; May 16, 2019, Susp.	do	Do.
Wetumka, City of, Hughes County	400453	December 5, 1977, Emerg; January 3, 1986, Reg; May 16, 2019, Susp.	do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: May 2, 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. 2019–10190 Filed 5–15–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 180522499–9223–02]

RIN 0648–BH96

List of Fisheries for 2019

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2019, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2019 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: The effective date of this final rule is June 17, 2019.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Suzie Teerlink, Alaska Region, 907–586–7240; Kevin Brindock, Pacific Islands Region, 808–725–5146.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m.

Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP). This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will

be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.*, frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.*, occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.*, a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.*, a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript "1" in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery: In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether

the incidental mortality or serious injury is "frequent," "occasional," or "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes "serious" and "non-serious" documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2019 LOF generally summarizes data from 2011–2015. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the five-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence

indicating that undocumented interactions may be occurring (e.g., fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are generally not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's

website: <https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program>.

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a "*" after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2. HSFCA permits are valid for five years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear

type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at <https://www.fisheries.noaa.gov/node/23351>.

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under "How Do I Find Out if a Specific Fishery is in Category I, II, or III?" on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>, linked to the "List of Fisheries Summary" table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my Marine Mammal Authorization Program (MMAP) authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal.

In the West Coast Region, authorization certificates may be obtained from the website http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html.

In the Alaska Region, authorization certificates may be obtained by visiting the National MMAP website <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate>.

In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Certificates may also be obtained by visiting the Greater Atlantic Regional Office website <https://www.greateratlantic.fisheries.noaa.gov/mmap>.

In the Southeast Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Vessel or gear owners can receive additional authorization certificates by contacting the Southeast Regional Office at 727-209-5952 or by visiting the National MMAP website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate>.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or

II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Alaska, Greater Atlantic, and Southeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. Certificates can also be obtained from the region's website. In the Pacific Islands regional fisheries, vessel or gear owners receive an authorization certificate by January 1 for state fisheries and with their permit renewal for Federal fisheries. In West Coast regional fisheries, vessel or gear owners receive authorization either with each renewed state fishing license in Washington and Oregon, with their permit renewal for Federal fisheries (the timing of which varies based on target species), or via U.S. mail. Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION**). Additional authorization certificates are available for printing on the National MMAP website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate>.

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries,

fishing activity. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations> or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to nmfs.mireport@noaa.gov; (3) faxed to the NMFS Office of Protected Resources at 301-713-0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be

found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams>. It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>, or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Kevin Brindock.

Sources of Information Reviewed for the 2019 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure,

uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2019 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2017 SARs, which are based on data from 2011–2015. The SARs referenced in this LOF include: 2015 (81 FR 38676; June 14, 2016), 2016 (82 FR 29039; June 27, 2017), and 2017 (83 FR 32093; July 11, 2018). The SARs are available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>.

Comments and Responses

NMFS received seven comment letters on the proposed LOF for 2019 (83 FR 53422; October 23, 2018). Comments were received from the Marine Mammal Commission (Commission), Hawaii Longline Association (HLA), Maine Lobstermen's Association (MLA), two individuals, a joint letter from Lund's Fisheries and The Town Dock, and a joint letter from Center for Biological Diversity (CBD), Humane Society of the United States (HSUS) and Whale and Dolphin Conservation (WDC). Responses to substantive comments are below; comments on actions not related to the LOF are not included.

General Comments

Comment 1: A commenter notes that NMFS discussed the factors used to classify fisheries by analogy on the LOF in the final 1996 LOF and acknowledges that fishing technologies have changed and improved since the 1996 final LOF. The commenter recommends NMFS update the factors used to classify fisheries by analogy on the LOF.

Response: NMFS has classified fisheries by analogy on the LOF that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals. Fishery classification by analogy was discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and the factors for classifying by analogy are listed in the regulatory definition of a “Category II fishery” in 50 CFR 229.2.

The regulatory definition includes various factors to evaluate when classifying by analogy. 50 CFR 229.2 states, “In the absence of reliable information indicating the frequency of incidental mortality and serious injury

of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is “occasional” by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator.” If NMFS does not have enough information on the various factors listed above to complete a tier analysis, 50 CFR 229.2 states eligible commercial fisheries not specifically identified in the LOF are deemed to be Category II fisheries until the next list of fisheries is published. When classifying fisheries by analogy, NMFS applies this regulatory definition using the best available information when evaluating the other factors listed above. Therefore, NMFS is not updating the factors used to classify fisheries by analogy on the LOF.

Comment 2: A commenter notes that NMFS annually reviews the information presented in the current SARs, injury determination reports and other sources of new information to determine which species or stocks are included on the LOF as incidentally killed or injured in a fishery. The commenter believes the 2011–2015 data summarized in the SAR and the additional other sources of information are insufficient for identifying the species or stocks incidentally killed or injured in a fishery.

Response: When NMFS reviews the LOF annually, we use the best available scientific information including the SARs. The SARs provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The MMPA requires NMFS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every three years for non-strategic stocks. NMFS publishes a notice of availability and solicits public comments on the draft SARs annually. Additionally, NMFS can use more recent data provided it has been peer reviewed and is publicly available.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 3: CBD, HSUS and WDC support adding the North Pacific stock of sperm whales to the list of species and/or stocks incidentally killed or injured in the Alaska Bering Sea, Aleutian Islands halibut longline fishery. The commenters also recommend NMFS elevate the Alaska

Bering Sea, Aleutian Islands halibut longline fishery to a Category I fishery because the mean estimated annual mortality (1.5 sperm whales) exceeds the PBR level in the proposed 2018 stock assessment report of 0.5 sperm whales.

Response: NMFS has added the North Pacific stock of sperm whales to the list of species and/or stocks incidentally killed or injured in the Alaska Bering Sea, Aleutian Islands halibut longline fishery.

NMFS uses the classification criteria described in the preamble to classify fisheries as Category I, Category II, or Category III. The 2019 LOF is based on the final 2017 SARs, which do not define a PBR for the North Pacific sperm whale stock. The draft 2018 SAR includes a PBR that applies to a small portion of the stock's range and as such is considered an underestimate.

Comment 4: CBD, HSUS and WDC recommend elevating the Gulf of Alaska sablefish longline fishery to a Category I fishery, because the mortality and serious injury of the North Pacific stock of sperm whales exceeds the PBR level of 0.5 sperm whales in the draft 2018 SARs.

Response: See Response to Comment 3.

Comment 5: CBD, HSUS and WDC support adding the Central North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery. The commenters note, that unless there is genetic or photo-identification information to the contrary, the LOF should state that the two 2015 strandings were from the ESA-listed Mexico distinct population segment (DPS). NMFS is in the process of reviewing the humpback whale stock structure, and the commenters recommend that the LOF note the relevant humpback whale DPS until the stock structure review is finalized.

Response: NMFS has added the Central North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured AK Prince William Sound salmon set gillnet fishery.

Because only the Central North Pacific stock of humpback whale occurs in Prince William Sound, the two 2015 humpback whale M/SI reports in Prince William Sound were only applied to the Central North Pacific stock. As the commenters note, NMFS is in the process of reviewing the stock structure of humpback whales under the MMPA. Currently, the management units for humpback whales are not defined with the same delineations under the ESA

and MMPA. As the LOF is a requirement of the MMPA, it uses MMPA stocks as management units rather than referencing a species or DPS from the ESA. In cases where M/SI occurs in an area of overlapping stocks, the M/SI is assigned to both stocks.

Comment 6: CBD, HSUS and WDC support adding the southern sea otter to the list of species and/or stocks incidentally killed or injured in the Category II California spiny lobster fishery.

Response: NMFS has added the southern sea otter to the list of species and/or stocks incidentally killed or injured in the Category II California spiny lobster fishery as proposed.

Comment 7: CBD, HSUS and WDC express concern that neither NMFS nor the California Department of Fish and Wildlife have attempted to monitor or estimate total marine mammal interactions in the California spiny lobster fishery since the fishery was listed as Category II. The commenters note that the Pacific Scientific Review Group recommended NMFS convene a take reduction team for fisheries that are known to entangle humpback whales along the West Coast and to evaluate the large number of entanglements to determine if they constitute an unusual mortality event. CBD, HSUS and WDC agree and request NMFS convene a take reduction team for all California pot and trap fisheries, including the California spiny lobster fishery.

Response: NMFS acknowledges that opportunistic reports of whale entanglements provide only a minimum accounting of entanglements that may be occurring.

Section 118(f)(3) of the MMPA provides that NMFS may prioritize convening take reduction teams and developing TRPs when insufficient funding is available. MMPA section 118(f)(3) contains specific priorities for developing TRPs. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS uses the most recent SAR and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. In addition, NMFS continues to collect data to categorize fixed gear fisheries and assess their risk to large whales off the U.S. west coast. Accordingly, given these factors and NMFS' priorities, implementation of developing a TRP for the California spiny lobster fishery and other similar Category II fisheries has been deferred under section 118 as other stocks/ fisheries are a higher priority for any

available funding for establishing new TRPs.

Comment 8: CBD, HSUS and WDC support adding the Eastern North Pacific stock of blue whales to the list of species and/or stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery. The commenters recommend that the final 2019 LOF include the three prorated serious injuries (2.25 serious injuries) that were caused by an unidentified fishery interaction in 2015 and 2016. The commenters note that 4.25 blue whales were seriously injured in 2015 and 2016 in fishing gear, and that the annual average, calculated over five years, is 0.85 blue whales, or 37 percent of the PBR level. Because the CA Dungeness crab pot fishery is the only known fishery to interact with blue whales, the commenters request that NMFS attribute all of these interactions to the CA Dungeness crab pot fishery for the purposes of the LOF.

Response: NMFS has added the Eastern North Pacific stock of blue whales to the list of species and/or stocks incidentally killed or injured in the CA Dungeness crab pot fishery based on documented entanglements. NMFS appreciates that the commenters have provided a proration for three serious injuries in unidentified fishing gear in 2015 and 2016, but this analysis is not included in the final 2017 SAR. The final 2017 SAR (Carretta *et al.*, 2018) and Human-Related Serious Injury and Mortality Report (Carretta *et al.*, 2018a) for the Eastern North Pacific stock of blue whales do not provide or report on any established methodology for assigning mortality or serious injury or mortality from entanglements with unidentified gear. Further, the gear from the 2015 entangled whale was consistent with several deep-set fisheries that do not include the CA Dungeness crab pot fishery (Carretta *et al.*, 2018a).

Comment 9: CBD, HSUS and WDC recommend that NMFS elevate the CA Dungeness crab pot fishery to a Category I fishery. Commenters note that in 2018, three confirmed blue whale entanglements were reported as of October, one of which was attributed to the CA Dungeness crab pot fishery. As previously noted in Comment 8, they believe blue whale entanglements in unidentified pot/trap fisheries should be attributed to the CA Dungeness crab pot fishery.

CBD, HSUS and WDC cite a 2013 NMFS Technical Memorandum that states the highest risk of blue whale entanglement was with the Dungeness crab pot fishery from October to December around San Francisco Bay

and Bodega Bay. Without changes to the fishery at the opening of the season, the commenters believe blue whale entanglements are likely to continue to occur because of the co-occurrence of blue whales and the California Dungeness crab pot fishery.

Response: NMFS does not assign M/SI to a particular fishery unless there is documented evidence that the fishery is responsible for the M/SI. We continue to use the information provided in the SARs for classifying fisheries on the LOF.

We appreciate the reference to analysis conducted by NMFS regarding the co-occurrence of whales and fixed fishing gear along the U.S. West Coast (Saez *et al.*, 2013). However, management of commercial and recreational fisheries are outside the scope of the LOF.

Comment 10: A commenter recommends using permitting data and fisheries self-reported fishing activity data as a more effective way to track the estimated number of vessels/persons in the American Samoa bottomfish handline fishery.

Response: There are no Federal permitting requirements for the bottomfish handline fishery in American Samoa. The number of fishers was estimated by using the average number of fishers per trip multiplied by the number of trips per day times the numbers of dates in the calendar year by gear type; the total was a combination of weekend and weekday stratum estimates. This method can be found in the most recent Annual Stock Assessment and Fishery Evaluation Report for American Samoa (WPRFMC, 2017). The current method provides the most accurate means of estimating participation given available data.

Comment 11: With respect to NMFS' proposal to remove the Main Hawaiian Islands (MHI) Insular stock of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery, the HLA supports the proposal while the Commission does not support the proposal.

The Commission notes that although no interactions were definitively attributed to MHI Insular false killer whales during the timeframe for the 2019 LOF, the 2017 SAR for the Hawaii false killer complex indicated that there was a small probability of the fishery interacting with MHI Insular false killer whales in 2011 and 2012. The Commission also notes that small numbers of interactions between MHI Insular false killer whales and the deep-set longline fishery may have occurred in the last 12 years (NMFS SARs 2012–

2017) and rare events, such as interactions between the deep-set longline fishery and the MHI Insular stock, can go undetected for years, especially when observer coverage is low. The Commission also notes that three interactions within or close to the known range of the MHI Insular stock were documented in 2018 (data presented to the False Killer Whale Take Reduction Team) and field observations of MHI Insular false killer whales continue to document 'line' scars that are consistent with injuries sustained through interaction with longline gear, some of which could have been from the deep-set longline fishery. Therefore, the Commission recommends that NMFS retain MHI Insular false killer whales on the list of stocks incidentally killed or injured in the deep-set longline fishery.

Response: In the proposed LOF for 2019, NMFS proposed removing MHI Insular false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery, primarily because no mortality or serious injuries from the insular stock had been observed from 2013 through 2017, according to the 2017 SAR. In those five years, only six false killer whale mortalities and serious injuries were observed inside the exclusive economic zone (EEZ).

However, between February 8, 2018, and January 15, 2019, six additional false killer whale mortality and serious injuries have been observed inside the EEZ. Three of these mortalities and serious injuries occurred close to the outer boundary of the Main Hawaiian Islands Longline Fishing Prohibited Area, in close proximity to the outer boundary of the MHI Insular false killer whale stocks' range. While the interactions occurred within the pelagic stock boundary, the interactions have not yet been evaluated for assignment to insular or pelagic stocks in the SAR. The recent occurrence of three mortalities and serious injuries over a relatively short time period near the outer range of the insular stock has led us to reconsider our proposal to remove the insular stock from the list of stocks incidentally killed or injured by the deep-set longline fishery prior to SAR evaluation.

As noted in the section of the LOF proposed rule describing how NMFS determines which species or stocks are included as incidentally killed or injured in a fishery, for fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.*, fishery has evidence of fisheries interactions that cannot be

attributed to a specific fishery and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of relevant information to determine when it is appropriate to remove a species or stock.

The MHI Insular false killer whale's range overlaps with areas that are open to deep-set longline fishing and MHI Insular false killer whales have been documented with injuries consistent with fisheries interactions that have not been attributed to a specific fishery (Baird *et al.*, 2014). Although the SARs are based on the best available scientific information and provide the most current and inclusive information on each stock, including range, abundance, PBR, and level of interaction with commercial fishing operations, NMFS also reviews other sources of information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, and anecdotal reports from that time period. The six recent observed false killer whale mortalities and serious injuries that occurred in 2018 and 2019, including three near the outer boundary of the insular false killer whale's range, have not yet been incorporated in the SARs. These 2018 and 2019 false killer whale mortalities and serious injuries will be more fully evaluated in future SARs. Nevertheless, these interactions are relevant information that persuade us to maintain the insular false killer whale stock in the LOF at this time, pending a full analysis of these interactions in a future SAR. For the above reasons, NMFS has decided to retain the MHI Insular false killer whale stock on the list of species and/or stocks killed or injured incidental to the HI deep-set longline fishery.

Comment 12: The HLA restates a previous comment that the Hawaii deep-set longline fishery does not interact with the Northwestern Hawaiian Islands (NWHI) stock of false killer whales. HLA notes that (a) the False Killer Whale Take Reduction Plan closed the deep-set longline fishery for almost the entire range of the MHI insular and NWHI stocks, (b) since this change was made in 2013 there have been no interactions between the fishery and an animal from either stock, and (c) there has never been a deep-set longline fishery interaction in the very small area of the stocks' respective ranges that are not closed to longline fishing. HLA requests that NMFS remove these the

NWHI stock of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Response: This comment has been addressed previously (see 78 FR 53336, August 29, 2013, comment 11; 79 FR 14418, March 14, 2014, comment 4; 79 FR 77919, December 29, 2014, comment 2; 81 FR 20550, April 8, 2016, comment 5; and 83 FR 5349, February 7, 2018, comment 21). NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current SARs, among other relevant sources. The SARs are based on the best available scientific information and provide information on each stock, including range, abundance, PBR, and level of interaction with commercial fishing operations.

The 2019 LOF is based on the 2017 SARs, which report fishery interactions from 2011–2015; this is the best scientific and commercial information available for the time period examined. As reported in the 2017 SAR, nine false killer whales were taken in the deep-set longline fishery within the Hawaiian EEZ between 2011 and 2015, two occurred within the pelagic-NWHI overlap zone. Applying the proration methods described in detail in the 2017 SAR for takes in overlap zones, NMFS estimates a five-year average mortality and serious injury level of 0.4 NWHI false killer whales per year incidental to the Hawaii-based deep-set longline fishery from 2011–2015 (Carretta *et al.*, 2018). NMFS retained the NWHI stock of false killer whales on the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Comment 13: HLA recommends NMFS reclassify the Hawaii shallow-set longline fishery as a Category III fishery. HLA notes that the Hawaii shallow-set longline fishery has 100% observer coverage and only one serious injury has been observed in the EEZ since 2008. HLA states the 2017 SAR attributes a 0.1 M/SI to the shallow-set longline fishery for the pelagic stock of false killer whales in the U.S. EEZ. However, the 0.1 M/SI rate is derived entirely from a 2012 interaction that NMFS was unable to make a serious injury determination and was given a cannot be determined (CBD) determination. This CBD was then prorated as 0.3 M/SI because, in the previous five years, there were three interactions between the shallow-set longline fishery and the pelagic false killer whale stock in the EEZ. HLA

believes if the 2012 CBD interaction is prorated based upon the five-year look-back period used in the 2017 SAR (2011–2015), then the M/SI rate would be 0.0 because there were only two other interactions from 2011–2015, both of which were determined to be non-serious. Therefore, HLA recommends the shallow-set longline fishery should be reclassified as a Category III fishery.

Response: This comment has been addressed previously (see 83 FR 5349, February 7, 2018, comment 26). NMFS uses the classification criteria described in the preamble to classify fisheries as Category I, Category II, or Category III. A fishery is classified under Category II if the annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the stock's PBR level. Additional details regarding categorization of fisheries is provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995). The false killer whale interaction in 2012 that resulted in a “CBD” determination was prorated following the methods described in the 2016 SAR (Carretta *et al.*, 2017), which prorates serious versus non-serious injuries using the historic rate of serious injury while accounting for changes in gear following implementation of the False Killer Whale Take Reduction Plan in 2013. This proration resulted in a 0.3 M/SI for the pelagic false killer whale stock as reported in the 2016 SAR, which is 1.07 percent of PBR and within the range of 1–50 percent of PBR, requiring NMFS to classify the fishery as a Category II fishery consistent with section 118 of the MMPA.

Comment 14: HLA restates a previous comment opposing the inclusion of the Hawaii stock of *Kogia* species (Hawaii) on the list of species and/or stocks incidentally killed or injured in the Hawaii deep-set longline fishery. HLA requests that NMFS remove *Kogia* species from the list of species and/or stocks incidentally killed or injured in the deep-set longline fishery, because the 2017 SAR does not identify any observed interactions between either of the Hawaii *Kogia* stocks and the deep-set longline fishery.

Response: Although the 2013 SAR does not include observed interactions with Hawaii pygmy whales and dwarf sperm whales, a *Kogia* spp. M/SI was observed in the Hawaii deep-set longline fishery on February 25, 2014, resulting in a serious injury (Carretta *et al.*, 2017a). The 2017 SAR did not include updates to *Kogia* spp.; NMFS plans to update the *Kogia* spp. stock assessment in the 2018 SAR.

Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 15: Lund's Fisheries and The Town Dock note the longfin small mesh bottom trawl squid fishery is included on the LOF in both of the Category II Northeast and mid-Atlantic bottom trawl fisheries. In 2018, the Marine Stewardship Council determined that the U.S. Northeastern Longfin Inshore Squid Small Mesh Bottom Trawl Fishery, harvested by small mesh bottom trawls in U.S. waters between the Gulf of Maine and Cape Hatteras, NC, was certified as a sustainable fishery. The commenters request NMFS conduct a tier analysis of long-finned pilot whale mortality and serious injury in the small mesh and large mesh bottom trawl fisheries and consider classifying the small mesh and large mesh bottom trawl fisheries as separate fisheries on the LOF.

Response: NMFS received the request for an updated assessment for long-finned pilot whales and the subsequent request to use this information for analyses under the LOF, including splitting the bottom trawl fishery based on mesh size. At this time, we are unable to provide an update to the LOF classifications impacted by long-finned pilot whale bycatch without further information about pilot whale abundance in Canada. Updated Canadian stock assessments are currently being calculated and are expected in 2019. Future SARs will include updates to the pilot whale assessments as information becomes available.

Comment 16: The Commission does not agree with NMFS' proposal to remove the Western North Atlantic stock of gray seals from the list of species and/or stocks incidentally killed or injured in the Category II mid-Atlantic mid-water trawl fishery. The Commission recommends NMFS retain the Western North Atlantic stock of gray seals on the list of species and/or stocks incidentally killed or injured because NMFS' guidelines allow it to keep a stock with no deaths or injuries within the LOF timeframe on the list if there was no observer coverage of the fishery, or if there is evidence to suggest that undocumented interactions are occurring. Although there was observer coverage of the mid-Atlantic mid-water trawl fishery during the 2019 LOF timeframe, that coverage was nominal—just 2 to 6 percent. As previously noted by the Commission, rare mortality or serious injury events can be missed for several years, especially when observer coverage is extremely low. The

Commission also notes the 2018 draft SAR for Western North Atlantic gray seals documented continued strandings within the range of the mid-Atlantic mid-water trawl fishery, and some of these strandings had signs of fisheries interactions. Therefore, the Commission recommends that NMFS retain Western North Atlantic gray seals on the list of stocks incidentally killed or injured in the mid-Atlantic mid-water trawl fishery.

Response: In general, species are listed as incidentally killed or injured in a particular fishery based on data observed from the last five years. The list contained in the LOF is not intended to serve as a historical overview of takes as that data is available in individual species SARs as well as Appendix III.

From 2011–2015, no mortalities or injuries of gray seals were observed or reported in the mid-Atlantic mid-water trawl fishery (Hayes *et al.*, 2018). During this time-frame, the estimated percent observer coverage (trips) for the mid-Atlantic midwater trawl fishery was 41, 21, 7, 5, and 3%, respectively. Observer coverage includes both observers and at-sea monitors and averages 15.8% from 2011–2015. While strandings may occur in areas that overlap with the range of the mid-Atlantic mid-water trawl fishery, there are also several other fisheries that operate in this area. There is no evidence to support that these strandings were caused by the mid-Atlantic mid-water trawl fishery specifically. The removal of the Western North Atlantic stock of gray seals from the list of species incidentally killed or injured (Table 2) in this fishery does not impact the categorization of the fisheries in question as other species taken are driving the current categorization. NMFS will annually monitor bycatch of marine mammals in the Mid-Atlantic Mid-water trawl fishery, and will make adjustments to Table 2 should takes occur again in the future. NMFS has removed the Western North Atlantic stock of gray seals from the list of species and/or stocks incidentally killed or injured in the Category II mid-Atlantic mid-water trawl fishery.

Comment 17: The MLA requests NMFS reclassify the Maine lobster fishery as a stand-alone fishery, instead of including the fishery as part of the broader Category I Northeast/mid-Atlantic American lobster pot fishery.

MLA notes that the Maine lobster fishery is the largest lobster fishery, representing 83 percent of U.S. American lobster landings (NOAA Commercial Fisheries Statistics), and data concerning the Maine lobster fishery's interaction with endangered

large whales should be separated from that of other fishery regions with different levels of endangered large whale interactions. MLA states that in 2017, the state of Maine issued 5,900 lobster licenses. The majority (4,700) are small operations fishing seasonally from May through November within state waters.

MLA notes the 2018 draft North Atlantic right whale SAR identifies 28 individual serious injury and mortality cases from 2012 to 2016. Of these cases, two were attributed to the Canadian snow crab fishery, one to a U.S. trap/pot fishery and one to an unknown U.S. fishery where no gear was recovered. The gear in the other 24 cases could not be attributed to a particular fishery or country and nine had no gear present at all.

MLA states that based on NMFS entanglement records from 2000 to 2018, there has been only one right whale (#3120) confirmed entangled in Maine gear in April 2002 and the entanglement did not result in a mortality or serious injury. The only other record of Maine gear listed in the NMFS entanglement database relates to right whale #3146. However, the Maine lobster gear was a minor portion of a large gear ball the whale had been carrying and was not the primary entanglement.

MLA believes that based on recent data showing a shift in right whale distribution away from the Gulf of Maine, and lack of data on interactions between Maine lobster gear and right whales, NMFS should list the Maine state waters lobster fishery as a Category III fishery, and the Maine Federal waters lobster fishery as a Category II fishery.

Response: Entanglement in trap/pot gear is one of the largest threats that North Atlantic large whales face and attributing gear from entanglement events to a specific fishery and geographic location is difficult. The long distances the whales travel and transport gear before being sighted; rarity of actually sighting an entangled whale compared to the estimated entanglement rates; lack of adequate observer coverage on trap/pot fisheries, particularly state trap/pot fisheries; challenges in recovering gear if a whale is disentangled; and low likelihood that recovered gear is marked with an adequate location identifier all complicate our ability to identify discrete locations where entanglements occur.

The Atlantic Large Whale Take Reduction Team (Team) has spent many meetings and years grappling with this problem. NMFS introduced the concept of gear marking in 1998 under the

Atlantic Large Whale Take Reduction Plan (Plan). The gear marking strategy has been continually updated over the past two decades, with the more recent refinements being added in 2015 to continue helping determine where the highest risk of entanglement occurs. However, despite the current gear marking requirements, recovering gear entangling whales that possesses gear marks has remained low. This may indicate that whales are becoming entangled in areas where gear marking is not currently required or that the current gear marking strategy is inadequate to determine the spatial risk of where entanglements occur. Through the Team process, we are exploring additional ways to continue refining gear marking to help address these important questions.

While recovering marked gear from entangled large whales is rare, there were three documented cases between 2011–2016 where gear was recovered from disentangled North Atlantic right whales that were marked with red markings. Under the Plan gear marking requirements, this red marking represents the Northern Inshore State Waters and Northern Nearshore trap/pot Atlantic Large Whale Take Reduction Plan management areas, which includes areas where Maine lobstermen fish. Specifically, both areas are large and incorporate waters off Massachusetts, New Hampshire; and offshore. Both areas also overlap Maine state waters and Federal waters where Maine lobstermen operate. The specific trap/pot gear from two of these entanglements could not be identified. However, gear from one of the entanglement events (the 2016 event) with red markings was identified as lobster gear. With increased gear marking in the future, we will be better able to determine if fisheries in specific geographic areas should be reviewed for changes to categorization on the LOF. We commend the state of Maine for pursuing additional gear marking independent of the Team process. Additionally, if Maine state and Federal fisheries implement gear modifications to eliminate risk to large whales, such as vertical lineless technologies, we would evaluate that fishing gear according to the level of risk posed to marine mammals especially if it that risk is different from traditional fishing gear.

Comment 18: CBD, HSUS and WDC request NMFS consider the impacts of the mid-Atlantic gillnet fishery on the endangered North Atlantic right whale, because there is a clear analog in the mid-Atlantic to risk that is well known in the Northeast. The commenters

recommend adding the North Atlantic right whale to the list of stocks incidentally killed or injured in the mid-Atlantic gillnet fishery.

The commenters note that survey data, as well as opportunistic sightings and stranding data, suggest that right whales use the waters south of Nantucket and Martha's Vineyard year-round. According to the Northeast Fisheries Management Council, these waters are also a high use area for gillnet and pot/trap fisheries. CBD, HSUS and WDC note right whales are known to interact with gillnet fisheries and appear to do so disproportionately to other gear types. For example, 33 percent (8/24) of the right whale entanglement cases documented between 2010 and 2013 were in gear consistent with the gillnet fishery.

CBD, HSUS and WDC also note the distribution of right whales has dramatically shifted since 2010, likely in response to changes in climate and prey availability. As a result, it would appear that right whales' year-round use of the potentially productive waters in the mid-Atlantic is likely to increase and, as a result, so will their risk of entanglement in gillnets in the area. This increased risk to right whales should be considered in the categorization of the mid-Atlantic gillnet fishery.

Response: The mid-Atlantic gillnet fishery is listed as a Category I fishery in the 2019 LOF. The list of species and/or stocks incidentally killed or injured in the mid-Atlantic gillnet fishery includes those species the fishery has killed/injured during the last five years. The North Atlantic right whale is not included in this list because we do not have information that links this fishery to an entangled right whale from 2011–2015 (Hayes *et al.*, 2018). As previously stated, Table 2 does not serve as a historical reference of takes within a fishery or serve as an inclusive list for potential risk a fishery poses to species.

Between 2011–2015, there were two North Atlantic right whale entanglements in gillnet gear where the specific fishery and location of the entanglement could not be identified. In this timeframe, there were an additional 22 entanglements where the entangling gear and location could not be identified. Because North Atlantic right whale entanglements have been documented in unidentified gillnet gear, we acknowledge that gillnets throughout the range pose a threat of entanglement or serious injury to this species, especially given the level of uncertainty regarding where large whale entanglements occurs. We recognize this risk by including this fishery in

management efforts associated with the Atlantic Large Whale Take Reduction Team and Plan (see Table 4).

Comment 19: CBD, HSUS and WDC support adding the northern Gulf of Mexico stock of sperm whales to the list of species and/or stocks incidentally killed or injured in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery and recommends adding a reference in the LOF to support this change.

Response: NMFS has added the northern Gulf of Mexico stock of sperm whales to the list of species and/or stocks incidentally killed or injured in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery as proposed. Additional information about the northern Gulf of Mexico sperm whale entanglement in the pelagic longline fishery is available in NOAA Technical Memorandum, NOAA NMFS–SEFSC–709 (Garrison and Stokes, 2017).

Comments on Aquaculture

Comment 20: In response to NMFS' request for information on existing and anticipated gear types used for coastal and offshore aquaculture facilities, CBD, HSUS and WDC provided information on finfish, longline, marine algae and shellfish aquaculture. CBD, HSUS and WDC commented on the risk of cetacean entanglements in fish pens, longline aquaculture, marine algae culture and shellfish aquaculture fixed gear.

CBD, HSUS and WDC noted two humpback whales were entangled in a single Canadian aquaculture array in 2016. Both whales were reportedly entangled in the array's anchorage system with at least one of the whales dying as a result of the entanglement. In addition, an endangered North Pacific right whale was found seriously entangled in a shellfish aquaculture array in Korea.

Response: NMFS thanks the commenters for providing this information on various aquaculture operations and will review and consider it in future LOFs.

Summary of Changes From the Proposed Rule

NMFS retains the MHI Insular stock of false killer whales on the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery based on the overlap of the stock's range with HI deep-set longline fishing operations and the documentation of MHI Insular false killer whale injuries consistent with fisheries interactions that have not been attributed to a specific fishery.

Summary of Changes to the LOF for 2019

The following summarizes changes to the LOF for 2019, including the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2019 are identical to those provided in the LOF for 2018. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BSAI (Bering Sea and Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GOA (Gulf of Alaska), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Fishery Name and Organizational Changes and Clarification

NMFS adds a superscript “1” to the CA/OR/WA stock of short-finned pilot whale to indicate it is driving the Category II classification of the CA thresher shark/swordfish drift gillnet (≥14 inch (in) mesh).

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 143 to 142 vessels/persons

Category II

- HI shallow-set longline fishery from 22 to 13 vessels/person
- American Samoa longline fishery from 18 to 20 vessels/persons

Category III

- American Samoa bottomfish handline from 17 to 1092 vessels/person.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS adds the Hawaii stock of rough-toothed dolphin to the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

NMFS adds the Western North Pacific and Central North Pacific humpback whale stocks to the list of species and/or stocks incidentally killed or injured in the Category II AK Kodiak salmon set gillnet fishery.

NMFS adds the Eastern Chukchi Sea, Eastern Bering Sea, and Bristol Bay stocks of beluga whale to the list of species and/or stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery.

NMFS adds the southern sea otter to the list of species and/or stocks incidentally killed or injured in the Category II CA spiny lobster fishery.

NMFS adds the Eastern North Pacific stock of blue whales to the list of species and/or stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery. In addition, NMFS adds a superscript “1” to the stock to indicate it is driving the classification of the fishery.

NMFS adds the Eastern North Pacific AK resident stock of killer whale and AK spotted seal to the list of species and/or stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands Pacific cod longline fishery.

NMFS adds the Western U.S. stock of Steller sea lion to the list of species and/or stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery.

NMFS adds the Central North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery.

NMFS adds the Western North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Kodiak salmon purse seine fishery.

NMFS adds the Central North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Southeast salmon purse seine fishery.

NMFS adds the Eastern Pacific stock of northern fur seal and North Pacific stock of sperm whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands halibut longline fishery.

NMFS adds the AK stock of bearded seal to the list of species and/or stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod trawl fishery.

NMFS adds the AK stock of harbor seal and Western U.S. stock of Steller sea lion to the list of species and/or stocks incidentally killed or injured in the Category III AK Gulf of Alaska flatfish trawl fishery.

NMFS adds the AK stock of harbor seal to the list of species and/or stocks incidentally killed or injured in the

Category III AK Gulf of Alaska Pacific cod trawl fishery.

NMFS adds the Western U.S. stock of Steller sea lion to the list of species and/or stocks incidentally killed or injured in the Category III AK Gulf of Alaska rockfish trawl fishery.

NMFS adds the Western Arctic stock of bowhead whale to the list of species and/or stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands crab pot fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Name and Organizational Changes and Clarification

NMFS removes the superscript “1” from the Northern migratory coastal stock of bottlenose dolphin to indicate this stock is no longer driving the Category I classification of the Mid-Atlantic gillnet fishery.

NMFS removes the superscript “1” from the Gulf of Maine stock of harbor porpoise to indicate this stock is no longer driving the Category I classification of the Northeast sink gillnet fishery.

NMFS adds a superscript “1” to the Western North Atlantic offshore stock of bottlenose dolphin to indicate it is driving the Category II classification of the Mid-Atlantic bottom trawl fishery.

NMFS adds a superscript “1” to the Southern migratory coastal stock of bottlenose dolphin to indicate it is driving the Category II classification of the Atlantic blue crab trap/pot fishery.

NMFS adds a superscript “1” to the Gulf of Mexico Northern Coastal stock of bottlenose dolphin to indicate it is driving the Category II classification of the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category I

- Northeast sink gillnet fishery from 4,332 to 3,163 vessels/persons
- Northeast/Mid-Atlantic American lobster trap/pot fishery from 10,163 to 8,485 vessels/persons

Category II

- Mid-Atlantic mid-water trawl (including pair trawl) fishery from 382 to 320 vessels/persons
- Mid-Atlantic bottom trawl fishery from 785 to 633 vessels/persons
- Northeast mid-water trawl (including pair trawl) fishery from 1,087 to 542 vessels/persons

Category III

- Atlantic mixed species trap/pot fishery from 3,436 to 3,332 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS removes the WNA stock of harp seal from the stocks listed as incidentally killed or injured in the Category I Mid-Atlantic gillnet fishery.

NMFS adds the Northern Gulf of Mexico stock of sperm whale to the list of species and/or stocks incidentally killed or injured in the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

NMFS adds the Gulf of Mexico Eastern Coastal stock of bottlenose dolphin to the list of species and/or stocks incidentally killed or injured in the Category II Gulf of Mexico gillnet fishery.

NMFS removes the WNA stock of gray seal from the stocks listed as incidentally killed or injured in the Category II Mid-Atlantic mid-water trawl fishery.

NMFS removes the Canadian east coast stock of minke whale from the stocks listed as incidentally killed or injured in the Category II Northeast mid-water trawl fishery.

NMFS adds two stocks of bottlenose dolphins to the list species and/or stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, including: (1) Mobile Bay, Bonsecour Bay; and (2) Mississippi River Delta.

NMFS removes the WNA stock of gray seal from the stocks listed as incidentally killed or injured in the Category III Gulf of Maine Atlantic herring purse seine fishery.

NMFS removes two stocks of pilot whales from the list of species and/or stocks incidentally killed or injured in the Category III U.S. Atlantic tuna purse seine fishery, including: (1) WNA stock of long-finned pilot whale; and (2) WNA stock of short-finned pilot whale.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons on the High Seas (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 79 to 67 vessels/persons
- Western Pacific pelagic longline (HI deep-set component) fishery from 143 to 142 vessels/persons

Category II

- Pacific highly migratory species drift gillnet fishery from 4 to 6 vessels/persons
- Atlantic highly migratory species trawl fishery from 2 to 1 vessels/persons
- South Pacific tuna purse seine fishery from 35 to 38 vessels/persons
- South Pacific albacore troll longline fishery from 9 to 11 vessels/persons
- South Pacific tuna longline fishery from 4 to 3 vessels/persons
- Western Pacific pelagic longline (HI shallow-set component) fishery from 22 to 13 vessels/persons
- Pacific highly migratory species handline/pole and line fishery from 42 to 48 vessels/persons
- South Pacific albacore troll handline/pole and line fishery from 11 to 15 vessels/persons
- Western Pacific pelagic handline/pole and line fishery from 5 to 6 vessels/persons
- South Pacific albacore troll fishery from 22 to 24 vessels/persons
- South Pacific tuna troll fishery from 4 to 3 vessels/persons

Category III

- Northwest Atlantic bottom longline fishery from 1 to 2 vessels/persons
- Pacific highly migratory species longline fishery from 105 to 128 vessels/persons
- Pacific highly migratory species purse seine fishery from 7 to 10 vessels/persons
- Northwest Atlantic trawl fishery from 2 to 4 vessels/persons
- Pacific highly migratory species troll fishery from 149 to 150 vessels/persons

*List of Species and/or Stocks**Incidentally Killed or Injured on the High Seas*

NMFS adds the Hawaii stock of fin whale, Guadalupe fur seal and unknown stock of Mesoplodon species to the list of species and/or stocks incidentally killed or injured in the Category II Western Pacific Pelagic (HI shallow-set component) longline fishery.

Fisheries Affected by Take Reduction Teams and Plans

NMFS corrects an administrative error in Table 4. Under “affected fisheries” for the Pacific Offshore Cetacean Take Reduction Plan, NMFS updates the CA thresher shark/swordfish drift gillnet (≥ 14 in mesh) from Category I to Category II. This fishery was reclassified in the 2018 LOF (83 FR 5349, February 7, 2018), but the change was not reflected in Table 4.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery’s potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active

participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this LOF, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMPA reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2015. This list includes all species and/or stocks known to be killed or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.*, MMPA reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery’s classification (*i.e.*, the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock’s PBR) by a “1” after the stock’s name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock’s PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a “Category II fishery” in 50 CFR 229.2 (*i.e.*, fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and

the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a “2” after the fishery’s name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the exclusive economic zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These

fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a “*” after the fishery’s name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Longline/Set Line Fisheries:</i> HI deep-set longline* ^	142	Bottlenose dolphin, HI Pelagic; False killer whale, MHI Insular; ¹ False killer whale, HI Pelagic; ¹ False killer whale, NWHI; Humpback whale, Central North Pacific; <i>Kogia spp.</i> (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso’s dolphin, HI; Rough-toothed dolphin, HI; Short-finned pilot whale, HI; Sperm whale, HI; Striped dolphin, HI.
Category II		
<i>Gillnet Fisheries:</i> CA thresher shark/swordfish drift gillnet (≥14 in mesh)*	18	Bottlenose dolphin, CA/OR/WA offshore; California sea lion, U.S.; Dall’s porpoise, CA/OR/WA; Humpback whale, CA/OR/WA; Long-beaked common dolphin, CA; Minke whale, CA/OR/WA; Northern elephant seal, CA breeding; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso’s dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA; Short-finned pilot whale, CA/OR/WA; ¹ Sperm Whale, CA/OR/WA. ¹
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	50	California sea lion, U.S.; Harbor seal, CA; Humpback whale, CA/OR/WA; ¹ Long-beaked common dolphin, CA; Northern elephant seal, CA breeding; Sea otter, CA; Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) ² .	30	California sea lion, U.S.; Long-beaked common dolphin, CA; Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet ²	1,862	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Spotted seal, AK; Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet ²	979	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA; ¹ Harbor seal, GOA; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific; Sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet; Dall’s porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Humpback whale, Central North Pacific; ¹ Sea otter, South central AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet; Dall’s porpoise, AK; Harbor porpoise, GOA; ¹ Harbor seal, GOA; Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet ²	162	Dall’s porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet ²	113	Harbor porpoise, Bering Sea; Northern sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall’s porpoise, AK; Harbor porpoise, GOA; ¹ Harbor seal, GOA; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Sea otter, South central AK; Steller sea lion, Western U.S. ¹
AK Southeast salmon drift gillnet	474	Dall’s porpoise, AK; Harbor porpoise, Southeast AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific; ¹ Pacific white-sided dolphin, North Pacific; Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet ²	168	Gray whale, Eastern North Pacific; Harbor Porpoise, Southeast AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific (Southeast AK).

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of U.S.-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA; Harbor porpoise, inland WA; ¹ Harbor seal, WA inland.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK; Gray whale, Eastern North Pacific; Harbor porpoise, Bering Sea; Harbor seal, Bering Sea; Humpback whale, Western North Pacific; ¹ Killer whale, AK resident; ¹ Killer whale, GOA, AI, BS transient; ¹ Northern fur seal, Eastern Pacific; Ringed seal, AK; Ribbon seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.; ¹ Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK; Beluga whale, Bristol Bay; Beluga whale, Eastern Bering Sea; Beluga whale, Eastern Chukchi Sea; Dall's porpoise, AK; Harbor seal, AK; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific; Northern fur seal, Eastern Pacific; Ribbon seal, AK; Ringed seal, AK; Spotted seal, AK; Steller sea lion, Western U.S. ¹
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident; ¹ Killer whale, GOA, AI, BS transient. ¹
<i>Pot, Ring Net, and Trap Fisheries:</i>		
CA spiny lobster	194	Bottlenose dolphin, CA/OR/WA offshore; Humpback whale, CA/OR/WA; ¹ Gray whale, Eastern North Pacific; Southern sea otter.
CA spot prawn pot	25	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA. ¹
CA Dungeness crab pot	570	Blue whale, Eastern North Pacific; ¹ Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA. ¹
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA. ¹
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA. ¹
WA coastal Dungeness crab pot	228	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA. ¹
<i>Longline/Set Line Fisheries:</i>		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Dall's Porpoise, AK; Killer whale, Eastern North Pacific AK resident; Killer whale, GOA, BSAI transient; ¹ Northern fur seal, Eastern Pacific; Ringed seal, AK; Spotted seal, AK.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific; Steller sea lion, Western U.S.
HI shallow-set longline *^	13	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; ¹ Humpback whale, Central North Pacific; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-finned pilot whale, HI; Striped dolphin, HI.
American Samoa longline ²	20	Bottlenose dolphin, unknown; Cuvier's beaked whale, unknown; False killer whale, American Samoa; Rough-toothed dolphin, American Samoa; Short-finned pilot whale, unknown.
HI shortline ²	9	None documented.
Category III		
<i>Gillnet Fisheries:</i>		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA; Humpback whale, Central North Pacific; Sea otter, South central AK; Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI; Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	15	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S.; Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast; Northern elephant seal, CA breeding.
<i>Miscellaneous Net Fisheries:</i>		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Humpback whale, Central North Pacific; Humpback whale, Western North Pacific.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK Metlakatla salmon purse seine	10	None documented.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula)	936	Harbor seal, GOA; Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S.; Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA; Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
<i>Dip Net Fisheries:</i>		
CA squid dip net	115	None documented.
<i>Marine Aquaculture Fisheries:</i>		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.
WA salmon net pens	14	California sea lion, U.S.; Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
<i>Troll Fisheries:</i>		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
<i>Longline/Set Line Fisheries:</i>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific; Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	None documented.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent five years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Bearded seal, AK; Ribbon seal, AK; Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Ringed seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Harbor seal, AK; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Harbor seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK; Fin whale, Northeast Pacific; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S.; Harbor porpoise, unknown; Harbor seal, unknown; Northern elephant seal, CA breeding; Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S.; Dall's porpoise, CA/OR/WA; Harbor seal, OR/WA coast; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, CA/OR/WA; Steller sea lion, Eastern U.S.
<i>Pot, Ring Net, and Trap Fisheries:</i>		
AK Bering Sea, Aleutian Islands sablefish pot	6	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic; Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	Harbor seal, GOA.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA/OR coonstripe shrimp pot	36	Gray whale, Eastern North Pacific; Harbor seal, CA.
CA rock crab pot	124	Gray whale, Eastern North Pacific; Harbor seal, CA.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
<i>Hook-and-Line, Handline, and Jig Fisheries:</i>		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	Fin whale, Northeast Pacific.
AK halibut jig	71	None documented.
American Samoa bottomfish	1092	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
<i>Harpoon Fisheries:</i>		
CA swordfish harpoon	6	None documented.
<i>Pound Net/Weir Fisheries:</i>		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
<i>Bait Pens:</i>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<i>Dredge Fisheries:</i>		
AK scallop dredge	108 (5 AK)	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
WA/OR bait shrimp, clam hand, dive, or mechanical collection.	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK).	Killer whale, unknown; Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
<i>Live Finfish/Shellfish Fisheries:</i>		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington.

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

² Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Gillnet Fisheries:</i>		
Mid-Atlantic gillnet	3,950	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal; ¹ Bottlenose dolphin, Northern NC estuarine system; ¹ Bottlenose dolphin, Southern NC estuarine system; ¹ Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Humpback whale, Gulf of Maine; Minke whale, Canadian east coast.
Northeast sink gillnet	3,163	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Fin whale, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Hooded seal, WNA; Humpback whale, Gulf of Maine; Long-finned pilot whale, WNA; Minke whale, Canadian east coast; North Atlantic right whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA.
<i>Trap/Pot Fisheries:</i>		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine; Minke whale, Canadian east coast; North Atlantic right whale, WNA. ¹
<i>Longline Fisheries:</i>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	280	Atlantic spotted dolphin, Northern GMX; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Harbor porpoise, GME, BF; Kogia spp. (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA; ¹ Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, Northern GMX; Pygmy sperm whale, GMX; Risso's dolphin, Northern GMX; Risso's dolphin, WNA; Rough-toothed dolphin, Northern GMX; Short-finned pilot whale, Northern GMX; Short-finned pilot whale, WNA; ¹ Sperm whale, Northern GMX.
Category II		
<i>Gillnet Fisheries:</i>		
Chesapeake Bay inshore gillnet ²	248	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico gillnet ²	248	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, and estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,850	Bottlenose dolphin, Northern NC estuarine system; ¹ Bottlenose dolphin, Southern NC estuarine system. ¹
Northeast anchored float gillnet ²	852	Harbor seal, WNA; Humpback whale, Gulf of Maine; White-sided dolphin, WNA.
Northeast drift gillnet ²	1,036	None documented.
Southeast Atlantic gillnet ²	273	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	23	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal); North Atlantic right whale, WNA.
<i>Trawl Fisheries:</i>		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	Bottlenose dolphin, WNA offshore; ¹ Common dolphin, WNA; ¹ Gray seal, WNA; Harbor seal, WNA; Risso's dolphin, WNA; ¹ White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA; Gray seal, WNA; Harbor seal, WNA; Long-finned pilot whale, WNA. ¹
Northeast bottom trawl	2,238	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Long-finned pilot whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA. ¹
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic; Bottlenose dolphin, Charleston estuarine system; Bottlenose dolphin, Eastern GMX coastal; ¹ Bottlenose dolphin, GMX bay, sound, estuarine; ¹ Bottlenose dolphin, GMX continental shelf; Bottlenose dolphin, Mississippi River Delta; Bottlenose dolphin, Mobile Bay, Bonsecour Bay; Bottlenose dolphin, Northern GMX coastal; ¹ Bottlenose dolphin, SC/GA coastal; ¹ Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Western GMX coastal; ¹ West Indian manatee, Florida.
<i>Trap/Pot Fisheries:</i>		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot ² .	1,384	Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion); Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern GMX coastal.
Atlantic mixed species trap/pot ²	3,332	Fin whale, WNA; Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	7,714	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Central GA estuarine system; Bottlenose dolphin, Charleston estuarine system; ¹ Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern FL coastal; ¹ Bottlenose dolphin, Northern GA/Southern SC estuarine system; Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Northern NC estuarine system; ¹ Bottlenose dolphin, Northern SC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern GA estuarine system; Bottlenose dolphin, Southern Migratory coastal; ¹ Bottlenose dolphin, Southern NC estuarine system; West Indian manatee, FL.
<i>Purse Seine Fisheries:</i>		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern GMX coastal; ¹ Bottlenose dolphin, Western GMX coastal. ¹
Mid-Atlantic menhaden purse seine ²	19	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal.
<i>Haul/Beach Seine Fisheries:</i>		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal; ¹ Bottlenose dolphin, Northern NC estuarine system; ¹ Bottlenose dolphin, Southern Migratory coastal. ¹
NC long haul seine	30	Bottlenose dolphin, Northern NC estuarine system; ¹ Bottlenose dolphin, Southern NC estuarine system.
<i>Stop Net Fisheries:</i>		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
<i>Pound Net Fisheries:</i>		
VA pound net	26	Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, Southern Migratory coastal. ¹
Category III		
<i>Gillnet Fisheries:</i>		
Caribbean gillnet	>991	None documented in the most recent five years of data.
DE River inshore gillnet	unknown	None documented in the most recent five years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent five years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent five years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
<i>Trawl Fisheries:</i>		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
<i>Marine Aquaculture Fisheries:</i>		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
<i>Purse Seine Fisheries:</i>		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	None documented in most recent five years of data.
<i>Longline/Hook-and-Line Fisheries:</i>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Bottlenose dolphin, WNA offshore; Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
<i>Trap/Pot Fisheries:</i>		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay estuarine; Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Western GMX coastal; West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
<i>Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:</i>		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Maine herring and Atlantic mackerel stop seine/weir.	>1	Harbor porpoise, GME/BF; Harbor seal, WNA; Minke whale, Canadian east coast; Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
<i>Dredge Fisheries:</i>		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
<i>Haul/Beach Seine Fisheries:</i>		
Caribbean haul/beach seine	15	None documented in the most recent five years of data.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system; Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Choctawhatchee Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, Northern GA/Southern SC estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine; Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Southern NC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Western GMX coastal; Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic.

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

² Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Estimated Number HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Longline Fisheries:</i>		

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Estimated Number HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Highly Migratory Species *	67	Atlantic spotted dolphin, WNA; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Killer whale, GMX oceanic; Kogia spp. whale (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA; Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, WNA; Risso's dolphin, GMX; Risso's dolphin, WNA; Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ^	142	Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; Humpback whale, Central North Pacific; Kogia spp. (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso's dolphin, HI; Short-finned pilot whale, HI; Sperm whale, HI; Striped dolphin, HI.
Category II		
<i>Drift Gillnet Fisheries:</i>		
Pacific Highly Migratory Species * ^	6	Long-beaked common dolphin, CA; Humpback whale, CA/OR/WA; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA.
<i>Trawl Fisheries:</i>		
Atlantic Highly Migratory Species **	1	No information.
CCAMLR	0	Antarctic fur seal.
<i>Purse Seine Fisheries:</i>		
South Pacific Tuna Fisheries	38	No information.
Western Pacific Pelagic	1	No information.
<i>Longline Fisheries:</i>		
CCAMLR	0	None documented.
South Pacific Albacore Troll	11	No information.
South Pacific Tuna Fisheries **	3	No information.
Western Pacific Pelagic (HI Shallow-set component) * ^	13	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; Fin whale, HI; Guadalupe fur seal; Humpback whale, Central North Pacific; Mesoplodon sp., unknown; Northern elephant seal, CA breeding; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-beaked common dolphin, CA/OR/WA; Short-finned pilot whale, HI; Striped dolphin, HI.
<i>Handline/Pole and Line Fisheries:</i>		
Atlantic Highly Migratory Species	2	No information.
Pacific Highly Migratory Species	48	No information.
South Pacific Albacore Troll	15	No information.
Western Pacific Pelagic	6	No information.
<i>Troll Fisheries:</i>		
Atlantic Highly Migratory Species	1	No information.
South Pacific Albacore Troll	24	No information.
South Pacific Tuna Fisheries **	3	No information.
Western Pacific Pelagic	6	No information.
Category III		
<i>Longline Fisheries:</i>		
Northwest Atlantic Bottom Longline	2	None documented.
Pacific Highly Migratory Species	128	None documented in the most recent 5 years of data.
<i>Purse Seine Fisheries:</i>		
Pacific Highly Migratory Species * ^	10	None documented.
<i>Trawl Fisheries:</i>		
Northwest Atlantic	4	None documented.
<i>Troll Fisheries:</i>		
Pacific Highly Migratory Species *	150	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3: CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic.

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

^The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	<i>Category I:</i> Mid-Atlantic gillnet; Northeast/Mid-Atlantic American lobster trap/pot; Northeast sink gillnet. <i>Category II:</i> Atlantic blue crab trap/pot; Atlantic mixed species trap/pot; Northeast anchored float gillnet; Northeast drift gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; * Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	<i>Category I:</i> Mid-Atlantic gillnet. <i>Category II:</i> Atlantic blue crab trap/pot; Chesapeake Bay inshore gillnet fishery; Mid-Atlantic haul/beach seine; Mid-Atlantic menhaden purse seine; NC inshore gillnet; NC long haul seine; NC roe mullet stop net; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl; ^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot; ^ VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	<i>Category I:</i> HI deep-set longline. <i>Category II:</i> HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	<i>Category I:</i> Mid-Atlantic gillnet; Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	<i>Category I:</i> Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline. <i>Category II:</i> CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	<i>Category II:</i> Mid-Atlantic bottom trawl; Mid-Atlantic mid-water trawl (including pair trawl); Northeast bottom trawl; Northeast mid-water trawl (including pair trawl).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	

* Only applicable to the portion of the fishery operating in U.S. waters.

^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or

injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing this LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (“Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis”) of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a

management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

- Baird, R.W., S.D. Mahaffy, A.M. Gorgone, T. Cullins, D.J. McSweeney, E.M. Oelson, A.L. Bradford, J. Barlow, D.L. Webster. False Killer Whales and Fisheries Interaction in Hawaiian Waters: Evidence for Sex Bias and Variation Among Populations and Social Groups. 2014. *Marine Mammal Science* 31(2): 579–590.
- Carretta, J.V., E. Oleson, K.A. Forney, J. Baker, J.E. Moore, D.W. Weller, A.R. Lang, M.M. Muto, B. Hanson, A.J. Orr, H. Huber, M.S. Lowry, J. Barlow, D. Lynch, L. Carswell, and R.L. Brownell Jr. 2018. U.S. Pacific Marine Mammal Stock Assessments: 2017. NOAA Technical Memorandum NOAA–TM–NMFS–SWFSC–602. 161 p.
- Carretta, J.V., V. Helker, M.M. Muto, J. Greenman, K. Wilkinson, D. Lawson, J. Viezbicke, and J. Jannot. 2018a. Sources of human-related injury and mortality for U.S. Pacific west coast marine mammal stock assessments, 2012–2016. Draft document PSRG–2018–06 reviewed by the Pacific Scientific Review Group, March 2018. 145 p.
- Carretta, J.V., K.A. Forney, E. Oleson, D.W. Weller, A.R. Lang, J. Baker, M.M. Muto, B. Hanson, A.J. Orr, H. Huber, M.S. Lowry, J. Barlow, J.E. Moore, D. Lynch, L. Carswell, and R.L. Brownell Jr. 2017. U.S. Pacific Marine Mammal Stock Assessments: 2016. NOAA Technical Memorandum NOAA–TM–NMFS–SWFSC–577. 414 p.
- Carretta, J.V., M.M. Muto, S. Wilkin, J. Greenman, K. Wilkinson, D. Lawson, J. Viezbicke, and J. Jannot. 2017a. Sources of human-related injury and mortality for U.S. Pacific west coast marine mammal stocks assessments, 2011–2015. NOAA Technical Memorandum, NOAA–TM–NMFS–SWFSC–579. 126 p.
- Garrison, L.P. and Stokes, L. 2017. Estimated Bycatch of Marine Mammals and Sea Turtles in the U.S. Atlantic Pelagic Longline Feet During 2015. NOAA Technical Memorandum, NOAA–NMFS–SEFSC–709. 67 p.
- Hayes, S.A., E. Josephson, K. Maze-Foley, and P.E. Rosel, editors. 2018. U.S. Atlantic and Gulf of Mexico Marine Mammal Stocks Assessments, 2017. NOAA Technical Memorandum, NOAA–TM–NE–245. 378 p.
- Saez, L., D. Lawson, M. DeAngelis, E. Petras, S. Wilkin, and C. Fahy. 2013. Understanding the Co-occurrence of Large Whales and Commercial Fixed Gear Fisheries off the West Coast of the United States. NOAA Technical Memorandum, NOAA–TM–NMFS–SWR–044. 103 p.
- Western Pacific Regional Fishery Management Council (WPRFMC). 2017. Annual Stock Assessment and Fishery Evaluation Report: Fishery Ecosystem Plan for the American Samoa Archipelago. 415 p.
- Dated: May 10, 2019.
- Samuel D. Rauch, III,**
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.
[FR Doc. 2019–10139 Filed 5–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–XG771

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2019 Commercial Accountability Measure and Closure for Gulf of Mexico Greater Amberjack

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial greater amberjack in the Gulf of Mexico (Gulf) reef fish fishery for the 2019 fishing year through this

temporary rule. NMFS has determined that Gulf greater amberjack landings in 2018 exceeded the commercial annual catch target (ACT) and landings will have met the adjusted 2019 commercial ACT by June 9, 2019. Therefore, the commercial fishing season for greater amberjack in the Gulf exclusive economic zone (EEZ) will close on June 9, 2019, and the sector will remain closed until the start of the next commercial fishing season on January 1, 2020. This closure is necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective 12:01 a.m., local time, June 9, 2019, until 12:01 a.m., local time, January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the reef fish fishery of the Gulf, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All greater amberjack weights discussed in this temporary rule are in round weight.

The 2019 commercial annual catch limit (ACL) for Gulf greater amberjack is 402,030 lb (182,358 kg), as specified in 50 CFR 622.41(a)(1)(iii). The 2019 commercial quota (equivalent to the commercial ACT) is 349,766 lb (158,651 kg), as specified in 50 CFR 622.39(a)(1)(v)(B). However, NMFS has determined that in 2018, the commercial harvest of greater amberjack exceeded the 2018 commercial ACL of 319,140 lb (144,759 kg) by 12,263 lb (5,562 kg). Under 50 CFR 622.41(a)(1)(ii), NMFS is required to reduce the commercial ACL and the commercial ACT for greater amberjack in the year following an overage of the commercial ACL, by the amount of the overage. Therefore, NMFS adjusts the 2019 commercial ACL for greater amberjack to 389,767 lb (176,795 kg) and the 2019 commercial ACT to 337,503 lb (153,089 kg).

Under 50 CFR 622.41(a)(1)(i), NMFS is required to close the commercial sector for greater amberjack when the commercial ACT is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has

determined that as of June 9, 2019, the adjusted 2019 commercial ACT will have been reached. Accordingly, NMFS closes commercial harvest of greater amberjack from the Gulf EEZ effective 12:01 a.m., local time, June 9, 2019, until 12:01 a.m., local time, January 1, 2020.

During the commercial closure, the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 9, 2019, and were held in cold storage by a dealer or processor. The commercial sector for greater amberjack will re-open on January 1, 2020, the beginning of the 2020 greater amberjack commercial fishing season.

During the commercial closure, the bag and possession limits specified in 50 CFR 622.38(b)(1) apply to all harvest or possession of greater amberjack in or from the Gulf EEZ. However, the recreational sector for greater amberjack was closed on May 1, 2019. During the recreational closure, the bag and possession limits for greater amberjack in or from the Gulf EEZ are zero. Therefore, there is no recreational

harvest of greater amberjack in the Gulf EEZ until August 1, 2019, the start of the recreational fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf greater amberjack and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B) because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are

unnecessary because the rule establishing the requirement to close the commercial sector when the commercial ACT is reached or projected to be reached was subject to notice and comment, and all that remains is to notify the public of the commercial closure. Providing prior notice and opportunity for public comment is contrary to the public interest because there is a need to immediately implement this action to protect the greater amberjack resource. The capacity of the fishing fleet allows for rapid harvest of the commercial quota. Providing prior notice and opportunity for public comment on this action would require time and increase the likelihood that the commercial sector could exceed its quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: May 10, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019-10131 Filed 5-15-19; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 84, No. 95

Thursday, May 16, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0318; Product Identifier 2019-NM-015-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330-200 Freighter, A330-200, and A330-300 series airplanes. This proposed AD was prompted by an analysis conducted on Airbus SAS Model A330-200 Freighter, A330-200, and A330-300 series airplanes that identified structural areas that are susceptible to widespread fatigue damage (WFD). This proposed AD would require reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 1, 2019.

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

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

p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <http://www.regulations.gov>.

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-2019-0318; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2019-0318; Product Identifier 2019-NM-015-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on 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 NPRM.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that design approval holders (DAHs) establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0276R1, dated January 11, 2019; corrected January 15, 2019 (“EASA AD 2018–0276R1”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The MCAI states:

An analysis conducted on [Airbus SAS] A330 aeroplanes identified structural areas which are susceptible to widespread fatigue damage (WFD).

This condition, if not corrected, could lead to crack initiation and undetected propagation, reducing the structural integrity of the aeroplane, possibly resulting in rapid depressurisation and consequent injury to occupants.

To address this potential unsafe condition, Airbus developed a number of modifications (Mod) and published associated Service Bulletins (SB) for embodiment in service, to provide instructions to reinforce the various structural parts of the fuselage. Consequently, EASA issued AD 2016–0207 to require accomplishment of these modifications and reinforcements. Since that [EASA] AD was issued, Airbus developed new Mods for A330–223F and A330–243F aeroplanes and issued associated SBs accordingly. In addition, for certain required modifications, upper thresholds in flight hours (FH) have been defined and the Applicability of some required actions was redefined to certain aeroplane configurations.

For the reasons described above, EASA issued AD 2018–0276, retaining the requirements of EASA AD 2016–0207, which was superseded, requiring new actions [modifications] for A330–200F aeroplanes, introducing references to the related Airbus SBs, and amending some compliance times (see Table 3—Applicability of this AD). Since that [EASA] AD was issued, prompted by operator comments, it was determined that there was need to clarify the compliance time for aeroplanes that, for Action 9, were modified by using a previous revision of Airbus SB A330–53–3238. Consequently, this [EASA] AD is revised, introducing paragraph (6) to clarify this specific scenario. In addition, Note 2 of this [EASA] AD is corrected to clarify that the instructions of each SB are applicable for certain configurations, not limited to those MSN

[manufacturer serial number] listed in the Effectivity of the SB.

This revised [EASA] AD is republished to correct an error in one of the compliance times for Action 14.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The NPRM published in the **Federal Register** on September 19, 2017 (82 FR 43715). The NPRM was prompted by an evaluation by the DAH indicating that certain fuselage structures are subject to WFD. The NPRM proposed to require reinforcement modifications of various structural parts of the fuselage, and related investigative and corrective actions if necessary. Since we issued the NPRM, Airbus SAS developed new modifications for Model A330–200 Freighter series airplanes and issued associated service information. In addition, for certain required modifications, upper thresholds in flight hours have been defined and the applicability of certain required actions was redefined to certain airplane configurations. In light of these changes, we have withdrawn the NPRM published on September 19, 2017 and have issued this NPRM for public comment.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0276R1 describes procedures for reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary. This material 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, and it is publicly available through the EASA website.

FAA’s Determination and Requirements of This Proposed AD

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0276R1 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under “Differences Between this Proposed AD and the MCAI.”

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0276R1 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2018–0276R1, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2018–0276R1 that is required for compliance with EASA AD 2018–0276R1 will be available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0318 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

The MCAI provides lower-limit thresholds for accomplishment of certain actions. This proposed AD would additionally require obtaining instructions for further actions for airplanes already modified before the specified lower threshold is reached.

The compliance times for the modifications specified in this proposed AD for addressing WFD were established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 104 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 413 work-hours × \$85 per hour = \$35,105	Up to \$125,190	Up to \$160,295	Up to \$16,670,680.

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

Authority for This Rulemaking

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

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

This proposed 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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA-2019-0318; Product Identifier 2019-NM-015-AD.

(a) Comments Due Date

We must receive comments by July 1, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all airplanes identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330-223F and -243F airplanes.

(2) Airbus SAS Model A330-201, -202, -203, -223, and -243 airplanes.

(3) Airbus SAS Model A330-301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by an analysis conducted on Airbus SAS Model A330-200 Freighter, -200, and -300 series airplanes that identified structural areas that are susceptible to widespread fatigue damage

(WFD). We are issuing this AD to address this condition, which, if not corrected, could lead to crack initiation and undetected propagation, reducing the structural integrity of the airplane, possibly resulting in rapid depressurization and consequent injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018-0276R1, dated January 11, 2019; corrected January 15, 2019 ("EASA AD 2018-0276R1").

(h) Exceptions to EASA AD 2018-0276R1

(1) The "Remarks" section of EASA AD 2018-0276R1 does not apply to this AD.

(2) Where paragraph (1) of EASA AD 2018-0276R1 specifies to modify the airplane in accordance with each applicable service bulletin as specified in Appendix 1 of EASA AD 2018-0276R1, this AD also requires the accomplishment of all applicable related investigative and corrective actions before further flight in accordance with each applicable service bulletin as specified in Appendix 1 of EASA AD 2018-0276R1.

(3) For airplanes already modified before the threshold specified in Table 2 of Appendix 1 of EASA AD 2018-0276R1 is reached, within 6 months after the effective date of this AD, obtain instructions for additional maintenance tasks (e.g., modifications/inspections) from and approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA); and accomplish those tasks within the compliance time specified therein.

(i) No Reporting Requirement

Although certain service information referenced in EASA AD 2018-0276R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information

directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018-0276R1 that contains RC procedures and tests: Except as required by paragraphs (h)(3) and (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2018-0276R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email ADS@easa.europa.eu; Internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. EASA AD 2018-0276R1 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0318.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229.

Issued in Des Moines, Washington, on April 25, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019-09743 Filed 5-15-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2019-0310; Airspace Docket No. 19-ACE-7]

RIN 2120-AA66

Proposed Amendment of Class E Airspace; Forest City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Forest City Municipal Airport, Forest City, IA. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Forest City non-directional beacon (NDB), which provided navigation information for the instrument procedures at this airport. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before July 1, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2019-0310; Airspace Docket No. 19-ACE-7, at the beginning of your comments. You may also submit comments through the internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741-6030, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

www.archives.gov/federal-register/cfr/ibr-locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Forest City Municipal Airport, Forest City, IA, to support IFR operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2019-0310; Airspace Docket No. 19-ACE-7." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action

on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 7-mile radius (increased from a 6.9-mile radius) of Forest City Municipal Airport, Forest City, IA; removing the Forest City NDB and the associated extension from the airspace legal description; and adding an extension 4 miles each side of the 335° bearing from the airport extending from the 7-mile radius to 10.6 miles northwest of the airport.

This action is necessary due to an airspace review caused by the decommissioning of the Forest City NDB, which provided navigation information for the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and

effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Forest City, IA [Amended]

Forest City Municipal Airport, IA
(Lat. 43°14'05" N, long. 93°37'27" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Forest City Municipal Airport, and within 4 miles each side of the 335° bearing from the airport extending from the 7-mile radius to 10.6 miles northwest of the airport.

Issued in Fort Worth, Texas, on May 8, 2019.

John Witucki,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2019–09947 Filed 5–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0107]

RIN 1625–AA08

Special Local Regulation; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; reopening of public comment period.

SUMMARY: The Coast Guard proposes to amend its notice of proposed rulemaking and reopen the public comment period for a special local regulation for certain waters of the Choptank River at Cambridge MD, during the Thunder on the Choptank on July 27, 2019, and July 28, 2019 published in the **Federal Register** on March 18, 2019. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 17, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0107 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
SNPRM Supplemental notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard published a NPRM on March 18, 2019 (84 FR 9724), proposing to establish a special local regulation for the Thunder on the Choptank, on July 27, 2019, and July 28, 2019. The comment period closed April 17, 2019. The Coast Guard received two comments on the original request for comments.

Subsequent to the Coast Guard publishing the notice of proposed rulemaking, the Coast Guard noticed that the coordinates delineating the regulated area and designated spectator area in the NPRM were incorrect, and were based on those previously used for the Thunder on the Choptank held in 2017. The regulated area and designated spectator area coordinates for this year’s Thunder on the Choptank are intended to be based on those used for Thunder on the Choptank held last year. We are issuing this supplemental proposal to amend the proposed special local regulation to publicize the correct coordinates for the regulated area and designated spectator area, and reopen the comment period to account for this change. The Coast Guard will accept and review any comments received between the close of the comment period and the publication of this supplemental notice of proposed rulemaking.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of the Choptank River before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041, which

authorizes the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

This proposed rule would create a temporary special local regulation on certain waters of the Choptank River for the Thunder on the Choptank. This special local regulation would publicize the correct coordinates for the regulated area and designated spectator area. During past power boat racing events in the area, large wakes created from transient vessels operating on the Choptank River west of the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge have caused great concern for event planners. Such wakes are hazardous to participants as their presence in the race area would result in injury or death due to vessel capsizing or collisions among participant vessels during the high-speed races. Allowing the proposed power boat racing event to proceed without expanding the size of proposed regulated area to include these navigable waters within the regulated area would adversely affect event participants. The COTP Maryland-National Capital Region has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Choptank River at Cambridge, MD. Although incorrect designated spectator area coordinates were published in the NPRM, the changes proposed with this SNPRM are considered minor. There are no significant changes to the location and size of the designated spectator area.

The revised proposed regulated area would cover all navigable waters of the Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34’30” N, longitude 076°04’16” W; thence east to latitude 38°34’20” N, longitude 076°03’46” W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35’30” N, longitude 076°02’52” W; thence west along the shoreline to latitude 38°35’38” N, longitude 076°03’09” W; thence north and west along the shoreline to latitude 38°36’42” N, longitude 076°04’15” W; thence southwest across the Choptank River to latitude 38°35’31” N, longitude 076°04’57” W; thence west along the Hambrooks Bay breakwall to latitude 38°35’33” N, longitude 076°05’17” W; thence south and east along the

shoreline to and terminating at the point of origin.

The revised proposed designated spectator area would cover all navigable waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35’28” N, longitude 076°04’50” W; thence northeast to latitude 38°35’30” N, longitude 076°04’47” W; thence southeast to latitude 38°35’23” N, longitude 076°04’29” W; thence southwest to latitude 38°35’19” N, longitude 076°04’31” W; thence northwest to and terminating at the point of origin.

The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the power boat races, scheduled from 10 a.m. until 6 p.m. on July 27, 2019, and July 28, 2019.

All other regulatory provisions in the original proposed rulemaking remain the same. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration and time of year of the racing event, which would impact a small designated area of the Choptank River for 18 total enforcement hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the special local regulation. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to

safely transit the regulated area once the PATCOM deems it safe to do so.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 18 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0107 to read as follows:

§ 100.501T05–0107 Special Local Regulation; Choptank River, Cambridge, MD.

(a) *Definitions.* As used in this section:

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participants means all persons and vessels registered with the event sponsor as participating in the Thunder on the Choptank or otherwise designated by the event sponsor as having a function tied to the event.

Spectators means all persons and vessels not registered with the event sponsor as participants or assigned as official patrols.

(b) *Locations.* All coordinates reference Datum NAD 1983.

(1) *Regulated area.* All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N, longitude 076°04'16" W; thence east to latitude 38°34'20" N, longitude 076°03'46" W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N, longitude 076°02'52" W; thence west along the shoreline to latitude 38°35'38" N, longitude 076°03'09" W; thence north and west along the shoreline to latitude 38°36'42" N, longitude 076°04'15" W; thence southwest across the Choptank River to latitude 38°35'31" N, longitude 076°04'57" W; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area:

(2) *Race Area.* Located within the waters of Hambrooks Bay and Choptank

River, between Hambrooks Bar and Great Marsh Point, MD.

(3) *Buffer Zone.* All waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35'27.6" N, longitude 076°04'50.1" W; thence southeast to latitude 38°35'17.7" N, longitude 076°04'29" W; thence south to latitude 38°35'01" N, longitude 076°04'29" W; thence west to the shoreline at latitude 38°35'01" N, longitude 076°04'41.3" W.

(4) *Spectator Area.* All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35'28" N, longitude 076°04'50" W; thence northeast to latitude 38°35'30" N, longitude 076°04'47" W; thence southeast to latitude 38°35'23" N, longitude 076°04'29" W; thence southwest to latitude 38°35'19" N, longitude 076°04'31" W; thence northwest to and terminating at the point of origin.

(c) *Special local regulations:* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter the designated Spectator Area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator

vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 9:30 a.m. to 6:30 p.m. on July 27, 2019, and, from 9:30 a.m. to 6:30 p.m. on July 28, 2019.

Dated: May 7, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–10140 Filed 5–15–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0043; FRL–9993–53–Region 5]

Air Plan Approval; Illinois; State Board and Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Illinois's state implementation plan (SIP) addressing the state board requirements under section 128 of the Clean Air Act (CAA) and the related infrastructure element for several National Ambient Air Quality Standard (NAAQS) infrastructure submissions. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0043 at <http://www.regulations.gov>, or via email to aburano.douglas@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18)), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What is the result of EPA’s review of this SIP submission?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a January 25, 2018 submission from the Illinois Environmental Protection Agency (IEPA). The state submission addresses section 128 requirements and revisions to infrastructure submissions for the

2006 fine particulate matter (PM_{2.5}), 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} NAAQS specific to element E. EPA is not acting on the 2012 PM_{2.5} NAAQS infrastructure revision in this rulemaking.

B. Why did the state make this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” This submission must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.² EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. What is the result of EPA’s review of this SIP submission?

Section 110(a)(2)(E) of the CAA requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements with respect to state boards under CAA section 128.

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Illinois’s infrastructure SIP to address the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS (79 FR 40693 (July 14, 2014)).

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16–71933 (Aug. 30, 2018).

Under CAA sections 110(a)(2)(E)(i) and (iii), states are required to show they have adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. These requirements were previously approved for the infrastructure SIPs that are part of today’s proposed rulemaking.³

CAA section 110(a)(2)(E) also requires that each SIP contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under the CAA, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On January 25, 2018, IEPA submitted 35 Ill. Adm. Code 101.112(d) for incorporation into the SIP, pursuant to section 128 of the CAA. This rule applies to the Illinois Pollution Control Board which has the authority to approve permits and enforcement orders. The language found in 35 Ill. Adm. Code 101.112(d) is identical to the language in CAA section 128. EPA is proposing to find that this submittal meets the requirements of section 128 and satisfies the applicable requirements of CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

III. What action is EPA taking?

EPA is proposing to approve 35 Ill. Adm. Code 101.112(d) as satisfying the requirements of CAA section 128. EPA is also proposing to approve the infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Final approval of this action will terminate the Federal Implementation Plan Clock started for the disapproval of CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} and 2008 ozone NAAQS (see 80 FR 51730 (August 26, 2015)).

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by

³ For 2006 PM_{2.5} see 77 FR 65478 (October 29, 2012); for 2008 lead see 79 FR 41439 (July 16, 2014); and for 2008 ozone, 2010 NO₂, and 2010 SO₂ see 79 FR 62042 (October 16, 2014).

reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference a portion of 35 Ill. Adm. Code 101.112 “Bias and Conflict of Interest”, specifically, Section 101.112(d), effective July 5, 2017. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: April 30, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2019–09919 Filed 5–15–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0759; FRL–9993–72–Region 4]

Air Plan Approval; Kentucky; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO₂ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet by a letter dated November 16, 2018, for the purpose of addressing the Clean Air Act (CAA or Act) “good neighbor” interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.”

Specifically, EPA is proposing to approve Kentucky’s November 16, 2018, SIP revision addressing prongs 1 and 2 to ensure that air emissions in Kentucky do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state.

DATES: Comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0759 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by phone at (404) 562–9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations.¹ See 75 FR 6474

¹ Subsequently, after careful consideration of the scientific evidence and information available, on April 18, 2018, EPA published a final action to retain the current NO₂ standard at the 2010 level of 100 ppb. This action was taken after review of the full body of available scientific evidence and information, giving particular weight to the assessment of the evidence in the 2016 NO_x

(February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO_x). NO₂ is the component of greatest concern and is used as the indicator for the larger group of NO_x. Emissions that lead to the formation of NO₂ generally also lead to the formation of other NO_x. Therefore, control measures that reduce NO₂ can generally be expected to reduce population exposures to all gaseous NO_x which results in a reduction in the formation of ozone and fine particles both of which pose significant public health threats. For comprehensive information on the 2010 1-hour NO₂ NAAQS, please refer to the February 9, 2010 **Federal Register** document. See 75 FR 6474.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS.² This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.³ Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for compliance with statutory and

regulatory requirements, not for the state’s implementation of its SIP.⁴ EPA has other authority to address any issues concerning a state’s implementation of the regulations that comprise its SIP.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIPs. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). EPA sometimes refers to the prong 1 and prong 2 conjointly as the “good neighbor” provision of the CAA. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA’s most recent infrastructure SIP guidance, the September 13, 2013, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” did not explicitly include criteria for how the Agency would evaluate infrastructure SIP submissions intended to address section 110(a)(2)(D)(i)(I).⁵ With respect to certain pollutants, such as ozone and

particulate matter (PM), EPA has addressed interstate transport in eastern states in the context of regional rulemaking actions that quantify state emission reduction obligations.⁶ For NO₂, EPA has considered available information such as current air quality, emissions data and trends, and regulatory provisions that control source emissions to determine whether emissions from one state interfere with the attainment or maintenance of the NAAQS in another state. EPA’s review and proposed action on Kentucky’s CAA section 110(a)(2)(D)(i)(I) interstate transport SIP revisions for the 2010 NO₂ NAAQS is informed by these considerations.

Through this proposed action, EPA is proposing to approve Kentucky’s November 16, 2018, SIP revision addressing prong 1 and prong 2 requirements for the 2010 1-hour NO₂ NAAQS. The Commonwealth addressed CAA section 110(a)(2)(D)(i)(I) by providing information supporting its conclusion that emissions from Kentucky do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in downwind states. All other applicable infrastructure SIP requirements for Kentucky for the 2010 1-hour NO₂ NAAQS have been addressed in separate rulemakings. See 80 FR 14019 (March 18, 2015), 81 FR 83152 (November 21, 2016), and 84 FR 11652 (March 28, 2019).

II. What is EPA’s analysis of how Kentucky addressed prongs 1 and 2?

Kentucky concluded that the SIP adequately addresses prongs 1 and 2 with respect to the 2010 1-hour NO₂ NAAQS in its November 16, 2018, SIP revision. Kentucky provides the following reasons for its determination: (1) Monitored 1-hour NO₂ design values in Kentucky and neighboring states (Illinois, Indiana, Missouri, Ohio, Tennessee, and Virginia) are below the 2010 standard; (2) total emissions of NO_x in Kentucky have trended downward from 1987 to 2017; and (3) the SIP contains state regulations that directly or indirectly control NO_x emissions. EPA preliminarily agrees with the Commonwealth’s conclusion based on the rationale discussed below.

First, EPA notes that there are no designated nonattainment areas for the 2010 1-hour NO₂ NAAQS in Kentucky or the neighboring states. On February 17, 2012 (77 FR 9532), EPA designated

Integrated Science Assessment; analyses and considerations in the Policy Assessment; the advice and recommendations of the Clean Air Scientific Advisory Committee; and public comments. See 83 FR 17226 (April 18, 2018).

² States were required to submit infrastructure SIPs for the 2010 1-hour NO₂ NAAQS to EPA no later than January 22, 2013.

³ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance, available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf, as well as in numerous agency actions, including EPA’s prior action on Kentucky’s infrastructure SIP to address other 110(a)(2) elements for the PM_{2.5} NAAQS entitled “Air Plan Approval; Kentucky; Infrastructure Requirements for the 2012 PM_{2.5} National Ambient Air Quality Standard;” in the section “What is EPA’s approach to the review of infrastructure SIP submissions?” See 82 FR 21751 at 21752–21755 (May 10, 2017).

⁴ See *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

⁵ At the time the September 13, 2013, guidance was issued, EPA was litigating challenges raised with respect to its Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011), designed to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. CSAPR was vacated and remanded by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in 2012 pursuant to *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7. EPA subsequently sought review of the D.C. Circuit’s decision by the Supreme Court, which was granted in June 2013. As EPA was in the process of litigating the interpretation of section 110(a)(2)(D)(i)(I) at the time the infrastructure SIP guidance was issued, EPA did not issue guidance specific to that provision. The Supreme Court subsequently vacated the D.C. Circuit’s decision and remanded the case to that court for further review. 134 S. Ct. 1584 (2014). On July 28, 2015, the D.C. Circuit issued a decision upholding CSAPR, but remanding certain elements for reconsideration. 795 F.3d 118.

⁶ Nitrogen Oxides (NO_x) SIP Call, 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005); CSAPR, 76 FR 48208 (August 8, 2011).

the entire country as “unclassifiable/attainment” for the 2010 1-hour NO₂ NAAQS, stating that “available information does not indicate that the air quality in these areas exceeds the 2010 [1-hour] NO₂ NAAQS.”

Second, the 2015–2017 NO₂ design values in Kentucky and neighboring states are well below the 2010 1-hour NO₂ NAAQS standard of 100 ppb.⁷ The valid, monitored 2015–2017 valid design values for Kentucky were 27, 30, 31, 34, 40, and 49 ppb. The highest monitored 2015–2017 valid design values for the neighboring states of Illinois, Indiana, Missouri, Ohio, Tennessee, and Virginia are 56, 44, 49, 55, 53, and 45 ppb, respectively.⁸ The design values in Kentucky, and neighboring states, during this time period were 44 to 73 percent below the NAAQS.

Third, NO_x emissions data shows that NO_x emissions have continuously trended downward from the years 1987 to 2017.⁹ For example, the point source emissions data provided by the Commonwealth indicates that NO_x emissions for point sources from 2008 to 2016 has declined by approximately 57 percent.¹⁰ EPA data also confirms that NO_x emissions from point sources from Kentucky have declined from 2008 to 2017,¹¹ and NO_x emissions from all sectors declined between 2002 and 2014.¹²

Finally, Kentucky identifies the following SIP-approved regulations that directly or indirectly control NO_x emissions: 401 KAR 50:055—*General compliance requirements*; 401 KAR

50:060—*Enforcement*; 401 KAR 51:001—*Definitions for 401 KAR Chapter 51*; 401 KAR 51:005—*Purpose and general provisions*; 401 KAR 51:010—*Attainment status designations*; 401 KAR 51:017—*Prevention of significant deterioration of air quality*; 401 KAR 51:052—*Review of new sources in or impacting upon attainment areas*; 401 KAR 51:150—*NO_x requirements for stationary internal combustion engines*; 401 KAR 51:170—*NO_x requirements for cement kilns*; 401 KAR 52:030—*Federally-enforceable permits for non-major sources*; 401 KAR 52:100—*Public, affected state, and US EPA review*; 401 KAR 53:005—*General provisions*; 401 KAR 53:010—*Ambient air quality standards*; 401 KAR 59:001—*Definitions for abbreviations of terms used in the Title 401, Chapter 59*; 401 KAR 59:005—*General provisions*; 401 KAR 59:015—*New indirect heat exchangers*; 401 KAR 61:001—*Definitions for abbreviations of terms used in the Title 401, Chapter 61*; 401 KAR 61:005—*General provisions*; 401 KAR 61:015—*Existing indirect heat exchangers*; and 401 KAR 61:065—*Existing nitric acid plants*.

Kentucky also identified state-only provisions as additional regulations that the Commonwealth is implementing that provide for the control of NO_x emissions: 401 KAR 52:060—*Acid rain permits*; 401 KAR 51:240—*Cross-State Air Pollution Rule (CSAPR)*¹³ NO_x annual trading program; 401 KAR 51:250—*Cross-State Air Pollution Rule (CSAPR Update)*¹⁴ NO_x ozone season group 2 trading program.¹⁵ EPA notes that the CSAPR and Update rule were established to address transport for the ozone (1997 and 2008) and fine particulate matter (1997 and 2006) standards, however, the trading programs may yield residual NO_x emissions reduction benefits.¹⁶ Further, Kentucky identifies the following provisions where limited portions have been approved into the SIP: 401 KAR 52:020—*Title V permits*; 401 KAR 52:040—*State-origin permits*; and 401 KAR 52:070—*Registration of designated sources*.

For the reasons discussed above, EPA has preliminarily determined that Kentucky does not contribute

significantly to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state, and that Kentucky’s SIP includes adequate provisions to prevent emissions sources within the Commonwealth from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

III. Proposed Action

As described above, EPA is proposing to approve Kentucky’s November 16, 2018, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO₂ NAAQS.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

⁷ See Figure 1 in Kentucky’s submittal, which is based on the NO₂ design value data extracted from the EPA website at <https://www.epa.gov/air-trends/air-quality-design-values#report>.

⁸ Monitoring sites must meet the data completeness requirements listed in Appendix S to 40 CFR part 50 in order to have a valid design value. Table 1 in Kentucky’s submittal did not include the valid design value of 49 ppb recorded at AQS ID: 21–111–0075 in Louisville/Jefferson County or the invalid design value of 41 recorded at monitor number 21–111–0067 in Louisville/Jefferson County. Table 2 in Kentucky’s submittal includes all highest, valid design values for the neighboring states of Illinois, Indiana, Missouri, Ohio, Tennessee, and Virginia. These values can be found on EPA’s air quality design value website at <https://www.epa.gov/air-trends/air-quality-design-values>.

⁹ See Figure 1 in Kentucky’s November 16, 2018 submittal.

¹⁰ See Table 4 in Kentucky’s submittal. The data is presented in the submittal from 2008–2016 to display the decline in emissions from the start of CAIR in 2008, and then transitioning to CSAPR in 2011.

¹¹ See Emissions Inventory System data for Kentucky, available in the docket to this action.

¹² See 2014 National Emissions Inventory (NEI) Report, available at https://edap.epa.gov/public/extensions/nei_report_2014/dashboard.html#trend-db. The 2014 NEI Report is the latest available report.

¹³ See 76 FR 48208.

¹⁴ See 81 FR 74504.

¹⁵ The EPA notes that Kentucky submitted a SIP revision for 401 KAR 51.240, 401 KAR 51.250, and 401 KAR 51.260 on September 17, 2018 to the EPA to adopt the CSAPR and Update trading programs into their SIP.

¹⁶ Kentucky further included existing national rules that are designed to reduce emissions from on-road and off-road vehicles through the year 2025 and beyond. This information can be found in Kentucky’s submittal.

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: May 6, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019-10184 Filed 5-15-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0789; FRL-9993-57-Region 1]

Air Plan Approval; Massachusetts; Boston Metropolitan Area, Lowell, Springfield, Waltham, and Worcester Second 10-Year Carbon Monoxide Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision includes the second 10-year limited maintenance plan (LMP) for Carbon Monoxide (CO) for the Boston Metropolitan Area, as well as for the cities of Lowell, Springfield, Waltham, and Worcester. This LMP addresses maintenance of the CO National

Ambient Air Quality Standard (NAAQS) for a second 10-year period beyond the original re-designation to attainment. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0789 at <https://www.regulations.gov>, or via email to garcia.ariel@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, Air Quality Branch, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square, Suite 100 (mail code: 05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, email garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Revision to the Initial Maintenance Plan for Lowell
III. The CO Limited Maintenance Plan Option in Massachusetts
IV. Conformity Under the Limited Maintenance Plan Option
V. EPA's Evaluation of Massachusetts' SIP Revision
A. Attainment Inventory
B. Maintenance Demonstration
C. Monitoring Network/Verification of Continued Attainment
D. Contingency Plan
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. Background and Purpose

Under the provisions outlined in Sections 186 and 187 of the CAA, the Boston metropolitan area, which covers the nine surrounding cities of Boston, Cambridge, Chelsea, Everett, Malden, Medford, Quincy, Revere, and Somerville (the “Boston area”), as well as the cities of Lowell, Springfield, Waltham, and Worcester (the “four city areas”) were designated nonattainment for the CO NAAQS on November 6, 1991 (56 FR 56694). The Boston area was classified as “Moderate” nonattainment and the four city areas were classified as “Not Classified” nonattainment. On December 12, 1994, Massachusetts submitted a re-designation request for the Boston area and on May 25, 2001, Massachusetts submitted a re-designation request for the four city areas. These re-designation requests included a maintenance demonstration and contingency plans that outline Massachusetts' control strategy for maintenance of the CO NAAQS. The maintenance plan provisions under Section 175A of the CAA require that maintenance of the relevant NAAQS be provided for at least 10 years after re-designation, followed by an additional 10-year maintenance period.

On January 30, 1996, the Boston area was re-designated to attainment and EPA approved the first maintenance plan for this area (61 FR 2918). On February 19, 2002, the cities of Lowell, Springfield, Waltham, and Worcester were re-designated to attainment and EPA approved the first maintenance plan for these four city areas (67 FR 7272).

On February 9, 2018, to meet the requirements of Section 175A of the CAA, the Massachusetts Department of Environmental Protection (MassDEP) submitted a revision to its SIP consisting of a second 10-year CO limited maintenance plan (LMP) for the Boston area and for the four city areas. For the Boston area, the initial 10-year

maintenance period was from 1996 to 2006, and the second 10-year maintenance period was from 2006 to 2016.¹ For the four city areas, the initial 10-year maintenance period was from 2002 to 2012, and the second 10-year maintenance period is from 2012 to 2022.

II. Revision to the Initial Maintenance Plan for Lowell

On May 13, 2011, EPA published a final rule approving a SIP revision, submitted by MassDEP, which revised the contingency plan portion of the original CO maintenance plan for the city of Lowell (76 FR 27908). This portion of the plan is used to determine when contingency measures need to be triggered to reduce CO concentrations in Lowell. After EPA determined that CO concentrations measured in Lowell had been below the NAAQS for nearly 25 years, EPA's approval action allowed the discontinuation of CO monitoring in the Lowell maintenance area. Massachusetts established an alternative triggering mechanism for Lowell, which relies on CO data from a nearby CO monitor in the city of Worcester to determine when and if monitoring will be reestablished in the Lowell maintenance area, and, in some circumstances, when contingency measures will be triggered in the Lowell maintenance area.

III. The CO Limited Maintenance Plan Option in Massachusetts

EPA issued guidance via a memorandum dated October 6, 1995, on an LMP option for non-classifiable CO nonattainment areas.² This guidance states that to qualify for the LMP option, an area's second highest 8-hour average CO concentration (design value) must be below 85 percent of the NAAQS for the two-year period leading up to re-designation. EPA has determined that the CO LMP option is also available for second 10-year maintenance plans, regardless of the original nonattainment classification.

The Boston area's 1994 CO re-designation request was submitted prior to the availability of the LMP option. However, the 1994 CO re-designation

request illustrated that monitored levels of CO were below the "85 percent of the NAAQS" threshold. Massachusetts' monitored CO design values for the Boston metropolitan area have remained well below 85 percent of the NAAQS; therefore, the Boston area is eligible for the LMP option. EPA's evaluation of the four city areas' 2001 CO re-designation request resulted in approval of an LMP. The monitored CO design values continue to be well below 85 percent of the NAAQS for the four city areas, thus the four city areas are also eligible for the LMP option.

EPA believes that it is justifiable and appropriate to apply a reduced set of maintenance plan requirements on areas with data below 85 percent of the NAAQS, thereby allowing areas to implement the LMP option. This includes not requiring the area to forecast future emissions or to develop transportation conformity budgets for use in conformity determinations in future Transportation Improvement Programs. EPA has concluded that emission budgets should not be required in LMP areas because it is unreasonable to assume that these areas will experience so much growth in the remaining portion of a 20-year maintenance period that an exceedance or violation of the CO NAAQS would result.

IV. Conformity Under the Limited Maintenance Plan Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budgets for the area.

While qualification for the CO LMP option does not exempt an area from the need to affirm conformity, conformity may be demonstrated without submitting an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the CO NAAQS would result. For transportation conformity purposes, EPA concludes that emissions in these areas need not be capped for the maintenance period and, therefore, a regional emissions analysis is not required. Similarly, EPA concludes that Federal actions subject to the general conformity rule satisfy the "budget test"

specified in 40 CFR 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

Under the LMP option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that: (1) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (2) transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108; (3) the MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105; (4) conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (5) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

In proposing to approve the second 10-year LMP, the four city areas will continue to be exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above. The 20-year maintenance period for the Boston area has expired; therefore, the Boston area is no longer required to demonstrate transportation conformity for the Boston metropolitan CO maintenance area.

V. EPA's Evaluation of Massachusetts' SIP Revision

The CO NAAQS is attained when the annual second highest 8-hour average CO concentration (design value) for an area does not exceed a concentration of 9.0 parts per million (ppm). EPA's October 6, 1995, guidance states that to qualify for the LMP option, an area's 8-hour average CO design value at the time of re-designation must be at or

¹ The Boston metropolitan area is no longer required to demonstrate transportation conformity for the Boston metropolitan area because the 20-year maintenance period for the Boston metropolitan CO maintenance area expired on April 1, 2016. However, the remainder of the maintenance plan requirements continue to apply, in accordance with the SIP.

² Memorandum from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group (MD-15), "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas," dated October 6, 1995.

below 7.65 ppm (85 percent of the NAAQS) for two consecutive years.

The 1994 CO re-designation request for the Boston area showed that the 8-hour CO design value was 4.8 ppm in 1993. CO monitoring in the years that followed has illustrated that the 8-hour design values have remained well below 7.65 ppm. For example, the highest CO design value for the Boston area in 2014 was 1.1 ppm and in 2015 was 0.9 ppm.

The CO design values in the four city areas have been well below 7.65 ppm since 1997 and in the Boston area have been well below 7.65 ppm since 1985. The highest CO 8-hour design value in 2014 was 1.1 ppm for Worcester, and in 2013 was 1.2 ppm for Springfield. MassDEP's monitoring data illustrates that an exceedance of the 8-hour CO NAAQS has not occurred in the Boston area or the four city areas since 1987. Therefore, as stated earlier in this proposed rulemaking action, the Boston area and the four city areas are eligible for the LMP option.

EPA's October 6, 1995, guidance on LMPs for CO specifies that LMPs should include the following elements: (1) Attainment Inventory; (2) Maintenance Demonstration; (3) Monitoring Network/Verification of Continued Attainment; and (4) Contingency Plan. MassDEP's second 10-year LMP for the Boston area and the four city areas includes these necessary components.

A. Attainment Inventory

The maintenance plan must contain an attainment-year emissions inventory to identify a level of CO emissions that is sufficient to attain the CO NAAQS. MassDEP's February 9, 2018, SIP submittal contains a CO emissions inventory for the Boston area and the four city areas using a base year of 2011.³ This inventory was developed following EPA inventory guidelines, and EPA's National Emissions Inventory (NEI) estimates were adopted for several Stationary Area/Nonpoint source categories including residential wood-burning, open burning, and other fires. For Stationary Point sources such as industrial, electric generation, commercial/institutional, and large residential facilities, annual activity and emissions data is submitted by the facilities to MassDEP's point-source database. On-road mobile-source emissions were calculated using EPA's Motor Vehicle Emissions Simulator (MOVES) model. MassDEP submitted

MOVES inputs to EPA's 2011 NEI and MassDEP adopted EPA's MOVES annual emissions estimates as reported in the NEI. As a potential exceedance of the CO NAAQS is more likely to occur during winter months when cooler temperatures contribute to incomplete combustion of fuel from motor vehicles, a "typical winter day" format is used for the CO inventory, consistent with EPA's inventory guidelines. MassDEP adopted the EPA NEI annual CO emission estimates for all off-road mobile source emission categories (including aircraft, rail locomotives, boats, residential lawn/garden equipment, and industrial/commercial construction off-road engines). In the 2011 emissions inventory, on-road mobile sources represent about 59 percent of the typical winter-day CO emissions, followed by 22 percent from nonroad mobile sources, nearly 19 percent from area sources, and under one percent from point sources.

B. Maintenance Demonstration

Consistent with EPA's October 6, 1995, guidance, which states that meeting the criteria for an LMP (7.65 ppm or lower design value for two consecutive years) also satisfies the requirement for a maintenance plan, MassDEP has provided CO monitoring data illustrating the consistent low levels of CO. MassDEP illustrates that there has not been an exceedance of the 1-hour CO standard of 35 ppm since 1983, and an exceedance of the 8-hour standard has not occurred since 1987. In addition, the 8-hour CO design values have continually been under 2.0 ppm (less than 25 percent of the CO NAAQS) since 2006. The monitored CO levels were below the 85 percent LMP benchmark of 7.65 ppm for the entire period of the initial 10-year maintenance plans and that trend has continued into the second 10-year maintenance periods for all areas in Massachusetts.

C. Monitoring Network/Verification of Continued Attainment

EPA's October 6, 1995, guidance states "[t]o verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA approved air quality monitoring network, in accordance with 40 CFR part 58." MassDEP's 2017 Air Monitoring Network Plan, the most recent EPA-approved annual air quality monitoring network plan, is included in the docket for this action. Under this plan, MassDEP currently operates a CO monitor at Liberty Street in Springfield, MA (in addition to a handful of other

CO monitors across Massachusetts). Due to the low and continually declining level of CO monitored at this site over the past two decades since the last exceedance of the NAAQS, MassDEP requested EPA's approval for the discontinuation of CO monitoring at the Springfield-Liberty Street site. Since the Springfield CO maintenance plan for the first 10-year period includes a commitment to continue to operate an appropriate air-quality monitoring network during the maintenance period, MassDEP proposes to use the Worcester-Summer Street monitor as a surrogate for Springfield, once the Springfield CO monitoring site is closed. MassDEP's February 9, 2018, SIP submittal highlights that Worcester has a higher population than Springfield, thus Worcester's CO concentrations are likely to be higher due to greater motor vehicle emissions, as motor vehicles are significant contributors of CO emissions. The Worcester and Springfield monitors are both located adjacent to high traffic-volume intersections, and MassDEP's monitoring data illustrates that the Springfield and Worcester monitors have, for many years, recorded similar CO concentrations, well below the NAAQS. For example, in 2014, the highest CO 8-hr design value for Worcester was 1.1 ppm and for Springfield was 0.9 ppm, well below the 9.0 ppm NAAQS and well below 7.65 ppm (the 85% of the NAAQS LMP option criteria). Based on these characteristics, ambient CO concentrations in Worcester are a valid surrogate for CO concentrations in Springfield. MassDEP proposes that, once the Worcester monitor begins to serve as a surrogate, if the second-highest monitored CO concentration in any calendar year in Worcester reaches 75 percent of the 1-hour or 8-hour NAAQS for CO, MassDEP will, within 9 months of the date such concentrations are recorded, re-establish a CO monitoring site in Springfield consistent with EPA siting criteria, and resume analyzing and reporting CO concentrations in Springfield. Under 40 CFR part 58.14(c), which allows approval of requests to discontinue ambient monitors "on a case-by-case basis if discontinuance does not compromise data collection needed for implementation of a NAAQS and if the requirements of appendix D to 40 CFR part 58 continue to be met," EPA proposes to find that the proposed (1) closure of the Springfield CO monitoring site, (2) utilization of the Worcester monitor as a surrogate, and (3) proposed criteria for re-instituting

³ At the time of the February 9, 2018 SIP submittal, the most recent comprehensive periodic emissions inventory (PEI) for CO was the 2011 Base Year Emissions Inventory which can be found at: <https://www.mass.gov/lists/massdep-emissions-inventories> (last visited on April 12, 2019).

the Springfield CO monitor meet the requirements of 40 CFR part 58.14(c).

MassDEP's Boston CO maintenance plan for the first 10-year period includes a commitment to continue to operate a CO monitoring network in compliance with 40 CFR part 53 that allows for monitors to be shut down with EPA approval. MassDEP stopped monitoring CO at the Kenmore site at the end of January 2015 in accordance with EPA's approval of the Massachusetts' 2015 Network Plan⁴ because: (1) MassDEP transitioned the CO monitoring efforts in Boston from Kenmore Square to Von Hillern Street; (2) the CO concentrations measured for Kenmore had been very low in years leading up to the closure; and (3) Boston's other monitor, Harrison Avenue, will continue to monitor CO for the foreseeable future. In addition, the Von Hillern Street CO monitor is located adjacent to a high traffic-volume interstate highway where concentrations of CO are presumably higher than the Kenmore Square site.

Massachusetts will continue to operate CO monitors in Boston, Worcester, Chicopee, and Lynn in accordance with 40 CFR part 58. Any future modification to this network will require approval from EPA to ensure that the attainment status of the area can be adequately verified.

D. Contingency Plan

CAA Section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the relevant NAAQS which may occur after re-designation of the area to attainment. MassDEP's February 9, 2018, SIP submittal makes no changes to the contingency provisions approved as part of the first 10-year maintenance plan for the Boston area (61 FR 2918; January 30, 1996) and for the four city areas (67 FR 7272; February 19, 2002), with the exception of added contingency measures due to the Springfield monitor closure.

Three of the four contingency plan measures included in the first 10-year maintenance plans are being implemented without any triggering event (exceedance of the CO design value). The three measures are: (1) Reformulated gasoline; (2) enhanced motor vehicle inspection and maintenance; and (3) California low-emission vehicle program. All three measures are being implemented to meet other requirements of the CAA and

have the additional benefit of reducing CO emissions. The fourth measure that will not go into effect unless a triggering event occurs is investigation and potential implementation of local traffic control measures, such as traffic-signal changes and revised parking restrictions, as well as review and adoption of transportation control measures, or other additional vehicle or fuel controls, as needed to reduce monitored concentrations to levels that meet the NAAQS.

In the initial 10-year CO maintenance plan for Springfield, the trigger for implementing the contingency plan is a violation at the Springfield monitor. MassDEP's proposed contingency plan trigger when CO monitoring in Springfield is discontinued will be to use the Worcester and Chicopee CO monitoring data as triggers for implementation of the contingency plan in Springfield. If either the Worcester or Chicopee monitor measures a CO violation, MassDEP will implement contingency measures in Springfield. A violation at the Worcester monitor would also trigger contingency measures in Worcester under the terms of the existing maintenance plan for Worcester. In the event that MassDEP is required to re-establish a CO monitor in Springfield (which would be triggered by the second-highest CO concentration in any calendar year in Worcester reaching 75 percent of the NAAQS), a violation of the NAAQS at the re-established Springfield monitor would trigger the contingency plan for Springfield.

EPA is proposing to determine that the proposed contingency measure plan for Springfield, in conjunction with the existing contingency measure provisions from the first 10-year maintenance plans, continue to satisfy the contingency plan requirement under CAA section 175A.

VI. Proposed Action

EPA is proposing to approve the second 10-year LMPs submitted by the Commonwealth of Massachusetts on February 9, 2018, for the Boston Metropolitan area and for the cities of Lowell, Springfield, Waltham, and Worcester. We are also proposing to approve the closure of the Springfield, Massachusetts monitor, as well as the revised contingency plan trigger for the Springfield area. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this

proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Statutory and Executive Order Reviews

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

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

⁴Massachusetts 2015 Air Monitoring Network Plan can be found at <http://www.mass.gov/eea/agencies/massdep/air/reports/annual-ambient-air-quality-monitoring-network-plan.html>.

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: May 9, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019-09978 Filed 5-15-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0731 FRL-9993-52-Region 5]

Air Plan Approval; Minnesota; Flint Hills Sulfur Dioxide (SO₂) Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Minnesota sulfur dioxide (SO₂) State Implementation Plan (SIP) for the Flint Hills Resources, LLC Pine Bend Refinery (FHR) as submitted on October 23, 2018. The proposed SIP revision pertains to the shutdown and replacement of certain equipment at the refinery as well as amendments to certain emission limits, resulting in an overall decrease of SO₂ emissions from FHR.

DATES: Comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0731 at <http://www.regulations.gov>, or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments

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

FOR FURTHER INFORMATION CONTACT:

Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What is EPA’s analysis of the SIP revision?
 - a. Replacement of 21H1 and 21H2 Coker Heaters and Their Associated Decoking Units
 - b. Emissions Limits at the #5 Sulfur Recovery Unit
 - c. Emissions Limits at the 31H2 Merox Off-Gas Unit
- III. SO₂ SIP and Emissions Impacts
- IV. What action is EPA proposing?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. What is the background for this action?

FHR operates an oil refinery located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. On October 23, 2018, the Minnesota Pollution Control Agency (MPCA) submitted a request to EPA to approve the conditions cited as “Title I Condition: 40 CFR 50.4(SO₂ SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y” in FHR’s revised joint Title I/Title V document, Permit No.

03700011–102¹ (joint document 102) into the Minnesota SIP. Joint document 102 contains measures for FHR to implement changes to technology at the plant as well as to revise SO₂ emissions limits for existing equipment. MPCA posted joint document 102 for public comment on August 21, 2018, and the comment period ended on September 19, 2018. MPCA received no comments on the document.

II. What is EPA’s analysis of the SIP revision?

Joint document 102, issued by MPCA on October 5, 2018, contains amended SIP conditions for FHR that will replace SIP conditions in joint document 101, which EPA approved on July 10, 2018 (83 FR 33846). The amended SIP conditions in joint document 102 address the shutdown and replacement of two coker heaters in FHR’s delayed coking units with smaller and more efficient heaters, as well as lowering allowable annual SO₂ emissions limits for the #5 sulfur recovery unit and 31H2 Merox off-gas unit. See Table 1 in Section III for a list of detailed changes to SO₂ allowable emissions limits associated with this proposed action. The amended SIP conditions in joint document 102 include:

a. Replacement of 21H1 and 21H2 Coker Heaters and Their Associated Decoking Units

The 21H1 (EQUI491) and 21H2 (EQUI492) coker heaters are older, less efficient coker heaters that will be

¹ In 1995, EPA approved consolidated permitting regulations into the Minnesota SIP. (60 FR 21447, May 2, 1995). The consolidated permitting regulations included the term “Title I condition” which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent and enforceable. A “Title I condition” is defined, in part, as “any condition based on source specific determination of ambient impacts imposed for the purpose of achieving or maintaining attainment with a national ambient air quality standard and which was part of a [SIP] approved by the EPA or submitted to the EPA pending approval under section 110 of the act. . . .” MINN. R. 7007.0100 (2013). The regulations also state that “Title I conditions and the permittee’s obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.” Further, “any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.” MINN. R. 7007.0450 (2007). Minnesota has initiated using the joint Title I/Title V document as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the joint Title I/Title V document submitted by MPCA are cited as “Title I conditions,” therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state’s procedure for using joint Title I/Title V documents to implement site specific SIP requirements and found it to be acceptable under both Title I and Title V of the Clean Air Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA).

removed, along with their associated steam-air decoking units (EQUI493 and EQUI494). These heaters and decoking units are being replaced with two new coker heaters (EQUI1491 and EQUI1492). The new coker heaters are natural draft heaters equipped with ultra-low oxides of nitrogen burners and heat recovery. These two features make them more energy efficient than the coker heaters they are replacing. Also, unlike the older coker heaters, the new coker heaters will be able to mechanically decoke without the need for separate steam-air decoking equipment. This mechanical decoking can be performed while the heater is online, which increases the utilization of the units but eliminates emissions associated with current steam-air decoking procedures. Overall, the new coker heaters will increase allowable annual average SO₂ emissions by 37.74 tons per year (tpy) over the old coker heaters, however this increase in allowable emissions will be more than offset by the facility setting lower limits on other equipment, as shown in Table 1 below. Once EPA approval of joint

document 102 is effective and the final construction activity to remove and replace the older units has completed, the SO₂ emissions limits for EQUI491, EQUI492, EQUI493, and EQUI494 will expire.

b. Emissions Limits at the #5 Sulfur Recovery Unit

FHR is investing in SO₂ reduction activities that will allow the #5 sulfur recovery unit (STRU83) to meet a more stringent allowable SO₂ emission limit of 343 tpy in joint document 102, down from 409.8 tpy in joint document 101. One of the SO₂ reduction activities FHR is likely to undertake will involve rerouting downstream sulfur-laden air to the front end of the #5 sulfur recovery unit to recapture and reprocess the sulfur. The proposed reduction in allowable SO₂ emissions in joint document 102 is 66.8 tpy, as shown in Table 1 below.

c. Emissions Limits at the 31H2 Mercox Off-Gas Unit

In order to help offset the increase in allowable SO₂ emissions from the

installation of new coker heaters EQUI1491 and EQUI1492, the 31H2 mercaptan oxidation (Mercox) off-gas stream unit (EQUI546) will have its allowable SO₂ emissions reduced to 200 tpy in joint document 102. This is a 90.8 tpy reduction in allowable SO₂ emissions from the limit in joint document 101. The allowable emissions limit revision is further shown in Table 1 below.

III. SO₂ SIP and Emissions Impacts

As shown in Table 1, the impact of the amended SIP conditions in joint document 102 results in a decrease of allowable SO₂ emissions of 7.9 pounds of SO₂ per hour (lb/hr) for the 3-hour and 24-hour SO₂ standards, and for the annual SO₂ standard, allowable emissions are decreased by 119.8 tpy. Joint document 102 becomes effective upon the effective date of EPA's approval of MPCA's October 23, 2018 request.

TABLE 1—SUMMARY OF CHANGES TO ALLOWABLE SO₂ EMISSIONS IN JOINT DOCUMENT 102

Unit	Sections in joint document 102 (where applicable *)	Change to allowable in lb/hr (3-hr and 24- hr standards)	Change to allowable in tpy (annual standard)
EQUI1491/21H4 #1 coker heater	5.165.8, 5.165.9, 5.168.10	9.65	33.8
EQUI1492/21H5 #2 coker heater	5.166.8, 5.166.9, 5.166.10	9.65	33.8
EQUI491/21H1 #1 coker heater		–5.58	13.2
EQUI492/21H2 #2 coker heater		–5.58	–13.2
EQUI493/21H1 steam-air decoking		–8.0	–1.73
EQUI494/21H2 steam-air decoking		–8.0	–1.73
EQUI546/31H2 Mercox off-gas	5.147.4	n/a	–90.8
STRU83/#5 sulfur recovery unit	5.173.3	n/a	–66.8
Total Change		–7.9	–119.8

* SO₂ emissions limits for units that were decommissioned and removed do not exist in joint document 102.

IV. What action is EPA proposing?

EPA is proposing to approve a revision to Minnesota's SO₂ SIP for FHR, as submitted by MPCA on October 23, 2018, and reflected in conditions labeled "Title I Condition: 40 CFR 50.4(SO₂ SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y" in joint document 102.

V. Incorporation by Reference

In this rule, EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference all the conditions in Minnesota Permit No. 03700011–102 cited as "Title I Condition: 40 CFR

50.4(SO₂ SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y", effective January 13, 2017. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus,

in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: April 30, 2019.

Cheryl L Newton,

Acting Regional Administrator, Region 5.
[FR Doc. 2019–09921 Filed 5–15–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2018–0715; FRL–9993–56–Region 6]

Air Plan Approval; Texas; Houston-Galveston-Brazoria Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; Section 185 Fee Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is proposing to approve a revision to the Texas State Implementation Plan (SIP). The EPA is proposing to determine that the Houston-Galveston-Brazoria (HGB) area is continuing to attain the 1979 1-hour and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard) and has met the CAA criteria for redesignation. Therefore, the EPA is proposing to terminate all anti-backsliding obligations for the HGB area for the 1-hour and 1997 ozone NAAQS. The EPA is also proposing to approve the plan for maintaining the 1-hour and 1997 ozone NAAQS through 2032 in the HGB area. The EPA is also proposing to approve the Severe Ozone Nonattainment Area Failure to Attain Fee SIP revision to address section 185 of the CAA for the 1-hour ozone NAAQS.

DATES: Written comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0715, at <https://www.regulations.gov/> or via email to paige.carrie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or

other file sharing system). For additional submission methods, please contact Carrie Paige, 214–665–6521, paige.carrie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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

FOR FURTHER INFORMATION CONTACT:

Carrie Paige, EPA Regional Office 6, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, 214–665–6521, paige.carrie@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION:

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

I. Background

In 1979, under section 109 of the CAA, the EPA established the primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202, February 8, 1979).¹ In 1997, we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997).² In 2008, we further revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008).³ For additional information on ozone, please see the Technical Support Document (TSD) in the docket for this action and visit <https://www.epa.gov/ozone-pollution>.

¹ Primary standards are set to protect human health while secondary standards are set to protect public welfare. In addition, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

² The standard of 0.08 ppm becomes 0.084 ppm or 84 ppb when rounding, based on the truncating conventions in 40 CFR part 50, Appendix P.

³ In 2015, we again revised the primary and secondary ozone NAAQS to 0.070 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). This action does not address the HGB area under the 2008 or 2015 ozone standards.

Implementation of the 1-Hour and the 1997 8-Hour Ozone NAAQS

In 2004, we published a rule governing implementation of the 1997 ozone NAAQS (Phase 1 Rule) (69 FR 23951, April 30, 2004). The Phase 1 Rule revoked the 1-hour ozone NAAQS along with designations and classifications for that standard and set anti-backsliding provisions for the transition from the 1-hour to the 1997 8-hour standard. Anti-backsliding provisions provide for controls that are not less stringent than the controls applicable to areas that were listed as nonattainment for the revoked ozone standards when the standards and designations were revoked. EPA did not include the section 185 fee requirement for areas classified as Severe and Extreme as an anti-backsliding provision in the Phase 1 Rule.⁴ The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) ruled that the section 185 fee requirement needed to be retained as an anti-backsliding provision under EPA's approach. *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (DC Cir. 2006) (“*South Coast I*”).

In 2015, EPA revoked the 1997 ozone NAAQS and established anti-backsliding requirements for the revoked 1997 ozone NAAQS, as well as some revisions to the anti-backsliding requirements for the revoked 1-hour standard, in our final rule for implementing the 2008 ozone NAAQS (known as the “SIP Requirements Rule,” 40 CFR 51.1100, and 80 FR 12264). EPA considered the *South Coast I* decision on the Phase 1 Rule in developing the SIP Requirements Rule for the 2008 8-hour ozone standard.

The SIP Requirements Rule provided that an area will be subject to the anti-backsliding obligations for a revoked NAAQS until we approve (1) a redesignation to attainment for the area for the 2008 ozone NAAQS or (2) a “redesignation substitute” for a revoked NAAQS, which required an area to demonstrate that it had attained the revoked NAAQS due to permanent and enforceable measures and would maintain that standard for ten years (40 CFR 51.1105(b)(1)). In the SIP Requirements Rule, EPA had created the redesignation substitute procedure because it believed it did not have the

authority under the CAA to change the designations of areas under a revoked NAAQS, but wanted a means to terminate anti-backsliding requirements for an area that would otherwise be eligible for a redesignation had the standard not been revoked. 80 FR 12264, March 6, 2015 at 12304–05. Though EPA created the redesignation substitute based on the CAA 107(d)(3)(E) redesignation criteria, the procedure did not require states to demonstrate satisfaction of all five criteria. Texas submitted and EPA approved redesignation substitute demonstrations for the HGB area for the 1-hour ozone NAAQS (80 FR 63429, October 20, 2015) and the 1997 8-hour ozone NAAQS (81 FR 78691, November 8, 2016), on the basis that the area was attaining both standards based on permanent and enforceable emission reductions and had demonstrated that the area would maintain each standard for 10 years.

On February 16, 2018, the D.C. Circuit Court vacated certain parts of the 2015 final rule for implementing the 2008 ozone NAAQS, including the redesignation substitute provision, based on the court's conclusion that those provisions were not consistent with CAA requirements. *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (DC Cir. 2018) (“*South Coast II*”). In that decision, the Court held that the redesignation substitute tool was not consistent with Clean Air Act requirements because it failed to satisfy all five of the statutory requirements set forth in CAA section 107(d)(3)(E), which governs redesignations from nonattainment to attainment. *Id.* at 1152.

The HGB Area's Designations and Classifications Under the 1-Hour Ozone NAAQS and the 1997 8-Hour Ozone NAAQS

Under the 1-hour ozone NAAQS, the HGB area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, was designated as nonattainment and classified as Severe-17 with an attainment deadline of November 15, 2007 (56 FR 56694, November 6, 1991).⁵ The area did not attain the 1-hour ozone standard by its applicable attainment date of November 15, 2007 (June 19, 2012, 77 FR 36400). This determination of failure to attain by the HGB area's attainment date triggered the anti-backsliding

requirements for CAA section 185 and contingency measures. The HGB area subsequently attained the 1-hour ozone NAAQS at the end of 2013 (80 FR 63429, October 20, 2015).

Under the 1997 ozone NAAQS, the HGB area (the same eight counties designated as nonattainment under the 1-hour ozone NAAQS) was designated as nonattainment and classified as Moderate with an attainment deadline of no later than June 15, 2010. (69 FR 23858 and 69 FR 23951 April 30, 2004). At the request of the Texas Governor we reclassified the area to Severe and set an attainment deadline of June 15, 2019 (73 FR 56983, October 1, 2008). The HGB area attained the 1997 8-hour ozone NAAQS at the end of 2014 (81 FR 78691, November 8, 2016).

The Texas Redesignation and Maintenance Plan Submittal

On December 12, 2018, the Texas Commission on Environmental Quality (TCEQ or State) adopted the HGB Redesignation Request and Maintenance Plan SIP Revision for the 1-hour and 1997 ozone NAAQS and submitted this package to EPA on December 14, 2018. The SIP revision includes a request that the EPA redesignate the HGB area to attainment for the 1-hour and 1997 ozone NAAQS and provides a maintenance plan that will ensure the area remains in attainment of these NAAQS through 2032. This submittal addresses all five criteria of CAA section 107(d)(3)(E). As stated in their submittal, the TCEQ developed this redesignation request and maintenance plan SIP revision to address the uncertainty created by the court's *South Coast II* ruling.

We note that the Agency has previously taken the position that when it revokes a NAAQS in full, all the associated designations and classifications under that NAAQS are also revoked, *see* 69 FR 23951, 23969–70 (April 30, 2004), and the Agency no longer has the authority to change those designations, 80 FR 12296–97, 12304–05 (March 6, 2015). However, in the SIP Requirements Rule, EPA stated that it was retaining the listing of the designated areas in 40 CFR part 81 under the revoked 1997 NAAQS “for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation.” 80 FR 12296–97 (emphasis added). The *South Coast II* court did not address the Agency's interpretation that it lacks authority to alter an area's designation post-revocation of a NAAQS. The *South Coast II* court decision did hold that areas that were nonattainment for a revoked standard at

⁴ The CAA section 185 fee program requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. It requires each major stationary source of VOC located in an area that fails to attain by its attainment date to pay a fee to the state for each ton of VOC the source emits in excess of 80 percent of a baseline amount.

⁵ Under CAA section 181(a)(2) certain Severe 1-hour ozone nonattainment areas like the HGB area were given an attainment deadline of 17 years rather than 15 years, thus the “Severe-17” classification.

the time of revocation could only terminate their obligations under that standard by demonstrating that they have met all five of the statutory redesignation criteria, and thus could not rely on the redesignation substitute mechanism included in the ozone implementation rule at issue. 882 F.3d at 1152 (“The Clean Air Act unambiguously requires nonattainment areas to satisfy all five of the conditions under § 7407(d)(3)(E) before they may shed controls associated with their nonattainment designation.”).

While the Court did not address the issue of EPA’s authority to alter designations after a standard has been revoked, it did speak to EPA’s interpretation that we lacked authority to change a nonattainment area’s classification under a revoked ozone NAAQS. The Court held that the EPA is required to continue to reclassify to a higher classification, or bump up, areas under the revoked 1997 NAAQS that fail to attain on time, because, in the court’s view, such reclassification is an anti-backsliding control. *South Coast II*, 882 F.3d at 1147–48. The Court’s holding on this point could be interpreted to call into question EPA’s interpretation that when a NAAQS and its associated designations and classifications are revoked in full, it no longer retains the authority to alter those designations and classifications.

EPA is proposing to find that Texas’ submittal meets all five criteria in section 107(d)(3)(E), as required by the court, for the 1-hour and 1997 ozone NAAQS. EPA is therefore proposing to terminate the anti-backsliding obligations for the HGB area associated with those NAAQS. We also take comment on whether EPA has the authority to alter an area’s nonattainment area designation post-revocation, if only to fully clarify that such area has satisfied all requirements with respect to that revoked NAAQS. We therefore propose in the alternative that if EPA has such authority, the HGB area be redesignated to attainment for the revoked 1-hour and 1997 ozone NAAQS. Regardless of whether designations can be altered after revocation, it is clear under *South Coast II* that EPA has the authority to terminate an area’s anti-backsliding obligations under a revoked NAAQS if that area meets the section 107(d)(3)(E) criteria.

If finalized, this action will replace our previous approvals of HGB redesignation substitutes for the 1-hour and 1997 8-hour ozone NAAQS. It should be noted that we are not proposing to alter our previous conclusions that the HGB area has

attained the 1-hour and 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions. Along with taking comment on whether EPA can alter an area’s nonattainment designation, we are specifically taking comment on whether as part of this action, EPA has the authority to and should revise the listings in Part 81 for the HGB area for the 1-hour and 1997 ozone standards from nonattainment to attainment in recognition that the area meets the 107(d)(3)(E) criteria and it is no longer necessary to identify the area as one where anti-backsliding obligations apply under these standards.

The Texas Severe Ozone Nonattainment Area Failure To Attain Fee Submittal

TCEQ adopted the HGB Severe Ozone Nonattainment Area Failure to Attain Fee program for the 1-hour ozone NAAQS (referred herein after as the HGB alternative section 185 fee equivalent program) on May 22, 2013. It was submitted to EPA as a SIP revision on November 27, 2018. The SIP revision provided a new Subchapter B (Failure to Attain Fee) in Chapter 101 (General Air Quality Rule) of Title 30 of the Texas Administrative Code (30 TAC).

II. Redesignation Criteria for Ozone Nonattainment Areas

As explained earlier in this action, we are proposing to terminate the anti-backsliding requirements for the revoked standards or redesignate to attainment of the revoked standards, which would also have the effect of terminating the anti-backsliding requirements, based on our conclusion that the five criteria in CAA section 107(d)(3)(E) are met. These criteria are the following: (1) We determine that the area has attained the NAAQS; (2) we fully approve the applicable implementation plan for the area under CAA section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) we determine the State containing such area has met all requirements applicable to the area under CAA section 110 (Implementation plans) and part D (Plan Requirements for Nonattainment Areas).

EPA’s Evaluation of the Redesignation and Maintenance Plan Submittal

Below is the summary of our evaluation. Detailed information on our

evaluation can be found in the TSD. EPA normally evaluates these criteria as the basis to redesignate an area to attainment, therefore, EPA has here conducted this analysis for purposes of terminating the 1-hour and 1997 ozone NAAQS anti-backsliding requirements or in the alternative, for redesignation.

Has the area attained the 1-hour and 1997 8-hour ozone NAAQS and are the improvements in air quality due to permanent and enforceable reductions in emissions? (Criteria 1 and 3)

In prior actions we determined that the HGB area attained the 1-hour ozone NAAQS (80 FR 63429, October 20, 2015) and 1997 8-hour ozone NAAQS (80 FR 81466, December 30, 2015 and 81 FR 78691, November 8, 2016). Quality-assured ambient air quality data found in the Air Quality System (AQS) database shows that the HGB area attained the 1-hour ozone NAAQS in 2013 and attained the 1997 ozone NAAQS in 2014. Quality-assured data collected through 2017 and preliminary data for 2018 indicate that the area has continued to maintain both of these standards (Table 1).⁶ We are proposing to determine that the HGB area is attaining the 1-hour and 1997 8-hour ozone NAAQS.

TABLE 1—1-HOUR AND 1997 OZONE DESIGN VALUES FOR THE HGB AREA

Years	1-hour ozone design value	1997 ozone design value
2011–2013	121 ppb	87 ppb.
2012–2014	111 ppb	80 ppb.
2013–2015	120 ppb	80 ppb.
2014–2016	120 ppb	79 ppb.
2015–2017	120 ppb	81 ppb.
Preliminary 2016–2018 ..	110 ppb	78 ppb.

In prior actions, we determined that the improvement in air quality in the HGB area is due to permanent and enforceable reductions in emissions (80 FR 63429, October 20, 2015, regarding the 1-hour ozone NAAQS; 81 FR 78691, November 8, 2016, regarding the 1997 ozone NAAQS). Texas identified State and Federal control measures that were approved in both the 1-hour and 1997 8-hour ozone attainment demonstration

⁶ At the time of this writing, the preliminary ozone data for 2018 are posted on the TCEQ website, but are not yet posted in AQS. See https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl. For more information on AQS, please visit <https://www.epa.gov/aqs>. Tables listing the HGB monitoring sites with the fourth high 8-hour ozone average concentrations and design values and expected exceedances of the 1-hour ozone NAAQS are provided in the TSD for this rulemaking.

(AD) SIPs that led to permanent and enforceable emission reductions. The 1-hour ozone AD SIP was approved on September 6, 2006 (71 FR 52670). The 1997 ozone AD SIP was approved on January 2, 2014 (79 FR 57). Additionally, we have approved Reasonable Further Progress SIPs for the HGB area that document continuous emission reductions due to permanent and enforceable measures for the 1-hour and 1997 8-hour ozone standards (70 FR 7407, February 14, 2005; 74 FR 18298, April 22, 2009; and 79 FR 51, January 2, 2014). We propose that the HGB area has attained the 1-hour and 1997 ozone NAAQS due to permanent and enforceable emission reductions.

Is the applicable implementation plan for the area fully approved and has the area met all applicable requirements under CAA section 110 and part D? (Criteria 2 and 5)

We are proposing to find that the HGB area has met all requirements under CAA section 110 (Implementation Plans and part D Plan Requirements for Nonattainment Areas) that are applicable for purposes of redesignation (CAA section 107(d)(3)(E)(v)), and that those requirements have been fully approved into the Texas SIP (CAA section 107(d)(3)(E)(ii)).

110(a)(2) of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public planning and emission control rule development.

Part D of the Clean Air Act establishes the plan requirements for nonattainment areas. Section 172(c) sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit plans on a schedule

pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications. The HGB area was classified as Severe under both the 1-hour and the 1997 ozone NAAQS with identical area boundaries. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. The area is also subject to the subpart 2 requirements contained in section 182(d) (Severe nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Since Congress passed the CAA Amendments in 1990, EPA has consistently held the position that not every requirement that an area is subject to is applicable for purposes of redesignation. *See, e.g.*, September 4, 1992, Memorandum from John Calcagni ("Calcagni Memo") at 6.7. For example, some of the Part D requirements, such as demonstrations of reasonable further progress, are designed to ensure that nonattainment areas continue to make progress toward attainment. EPA has interpreted these requirements as not "applicable" for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v) because areas that are applying for redesignation to attainment are by definition already attaining the standard. *Id.* Similarly, EPA has long held that only those CAA provisions that are relevant to an area's designation and classification as a nonattainment area are "applicable" for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v). For this reason, SIP revisions that apply regardless of whether an area is designated nonattainment or attainment, such as good neighbor plans required under CAA section 110(a)(2)(D)(i)(I), have not been considered "applicable" for purposes of redesignation. Finally, some requirements may not be applicable in this action given that both of the NAAQS at issue in this notice were revoked for all purposes, and, post-revocation, the HGB area remained subject only to the anti-backsliding requirements identified by EPA in

regulation. *See* 40 CFR 51.1105(a); 51.1100(o).

However, for the revoked ozone standards at issue here, over the past three decades the State has submitted numerous SIPs for the HGB area to implement those standards, improve air quality with respect to those standards, and to address anti-backsliding requirements for those standards. Therefore, even though some of the HGB area's SIP-approved measures address measures that are not requirements "applicable" for purposes of redesignation under CAA section 107(d)(3)(E)(ii) and (v), such as CAA section 182(b) reasonable further progress, or address requirements that were not retained for anti-backsliding, such as section 182(a) emissions inventories, we provide in the accompanying TSD the list of SIP-approved measures the State has adopted and EPA has approved for the HGB area with respect to the revoked 1-hour and 1997 ozone NAAQS. These include: (1) Emissions inventories, (2) emissions statements, (3) nonattainment new source review programs, (4) reasonably available control technology for sources of both VOC and NO_x, (5) gasoline vapor recovery, (6) both basic and enhanced vehicle inspection and maintenance programs, (7) enhanced ambient monitoring, (8) attainment and reasonable further progress demonstrations, (9) contingency measures for failure to attain or make reasonable further progress, (10) clean fuel vehicle programs, and (11) transportation control measures to offset emissions from growth in vehicle miles traveled.⁸ Texas also submitted SIPs to address CAA section 110(a)(2) for the 1997 ozone NAAQS, which we approved in prior actions.⁹ Similarly, as part of this action, EPA is proposing approval of an alternative 185 fee equivalent program submitted by Texas on November 27, 2018 to meet the requirement in CAA section 182(d)(3).

Does Texas have a fully approved ozone maintenance plan for the HGB area? (Criterion 4)

Section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to CAA section 175A. Under CAA section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years

⁷ "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992. To view the memo, please visit https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.

⁸ The requirements can be found in CAA sections 182(a) through 182(d).

⁹ Approval of the section 110(a)(2) Infrastructure SIP for the 1997 ozone standard for Texas is not required for purposes of redesignation.

after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of any future NAAQS violation.

EPA's interpretation of the elements under CAA section 175A is contained in the Calcagni Memo. Section 107(d)(3)(E)(iv) requires the maintenance plan to be "fully approved," and the Calcagni Memo provides that a state may submit the redesignation request and maintenance plan at the same time and rulemaking

on both may proceed on a parallel track. The Calcagni Memo further provides guidance on the content of a maintenance plan, explaining that it should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) an air quality monitoring commitment; (4) verification of continued attainment; and (5) a contingency plan.

In conjunction with the redesignation request submitted to EPA on December 14, 2018, TCEQ submitted a maintenance plan to provide for the ongoing attainment of the 1-hour and 1997 8-hour ozone NAAQS for at least ten years following the effective date of approval of the SIP revision. Our evaluation of the five requirements follows:

1. Attainment Inventory

The Texas submittal includes a 2014 base year emission inventory (EI) for NO_x and VOC. The TCEQ chose 2014 as the base year because it is the first year in which the HGB area is attaining both the 1-hour and 1997 ozone NAAQS and was the most recent periodic inventory available to develop the attainment EI. For reference, the previously approved 2011 EI (84 FR 3708, February 13, 2019) and the proposed 2014 base year EI are summarized (in tons per day or tpd) in Table 2. The 2014 base year EI was developed from the 2014 periodic EI, in accordance with the Air Emissions Reporting Requirements (*see* 80 FR 8787, February 19, 2015). We propose to approve the 2014 base year EI. For more information, see the TSD and the Texas submittal.

TABLE 2—PREVIOUS EMISSION INVENTORIES AND SUBMITTED EMISSION INVENTORIES FOR THE HGB AREA (tpd)

Source type	NO _x		VOC	
	2011 EI approved at 84 FR 3708	2014 EI submitted	2011 EI approved at 84 FR 3708	2014 EI submitted
Point	108.33	95.11	95.99	77.56
Area	21.15	30.99	304.90	301.97
Non-road Mobile	142.44	100.61	49.78	37.51
On-road Mobile	188.02	131.15	80.73	65.04
Totals	459.94	357.86	531.40	482.08

The State's submittal shows the historical trends of NO_x and VOC emissions reduced from 2002 through 2014, the date by which the HGB area reached attainment of both the 1-hour and 1997 ozone NAAQS. The attainment level emissions (provided in tpd) are identified by source category and summarized in Tables 3 and 4. The attainment emissions inventory is consistent with the Calcagni Memo.

2. Maintenance Demonstration

Texas has demonstrated maintenance of the 1-hour and 1997 ozone NAAQS through 2032 by providing EI projections from 2014 through 2032 that show emissions of NO_x and VOC for the HGB area remain at or below the attainment year (2014) emission levels. A maintenance demonstration need not be based on modeling.¹⁰ The future year Texas EIs presented are 2020, 2026, and

2032: 2032 is more than 10 years after the expected effective date of this action and 2020 and 2026 show emissions between the attainment year and final maintenance year. To generate the future year EIs, Texas estimated the amount of growth that will occur between 2014 and the end of 2020, 2026, and 2032. Generally, the State followed our guidelines in estimating the growth in emissions.

TABLE 3—CHANGE IN NO_x EMISSIONS FROM 2014 THROUGH 2032 FOR THE HGB AREA (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	95.11	128.77	128.94	129.12
Area	30.99	32.52	33.84	34.64
On-road	131.15	75.63	49.47	38.22
Non-road	100.61	75.77	63.65	61.60
Annual Totals:	357.86	312.69	275.90	263.58

¹⁰ See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

TABLE 4—CHANGE IN VOC EMISSIONS FROM 2014 THROUGH 2032 FOR THE HGB AREA (tpd)

Source Category	Year			
	2014	2020	2026	2032
Point	77.56	77.56	77.56	77.56
Area	301.97	319.18	327.46	351.20
On-road	65.04	49.16	37.82	28.59
Non-road	37.51	29.84	28.79	29.71
<i>Annual Totals:</i>	<i>482.08</i>	<i>475.74</i>	<i>471.63</i>	<i>487.06</i>

Table 3 shows a net decrease in emissions of NO_x from 2014 to 2032 of 98.28 tpd. Table 4 shows a net increase in emissions of VOC from 2014 to 2032 of 4.98 tpd, due to growth in area source emissions. The projected increase in VOC emissions is offset by the much larger projected decrease in NO_x emissions. In the most recent attainment demonstration submittal for the HGB area, the TCEQ included in their analysis that, excepting industrial

HRVOC, which are not expected to increase, NO_x emissions are responsible for more ozone creation than VOC emissions from area and mobile source groups.¹¹ In its submittal, Texas notes that photochemical modeling and data analysis for the HGB area consistently show that reducing NO_x emissions is expected to be at least as effective as reducing VOC emissions in lowering the ozone design value. This is further supported by the emission inventories

showing consistent decreases in NO_x emissions in the HGB area with concurrent reductions in Ozone levels. Therefore, Texas has offset the growth in VOC emissions with far greater NO_x emissions reductions. The projected reduction in NO_x emissions and projected growth in VOC emissions, expressed in tpd and as a percentage, are shown in Table 5.

TABLE 5—MAINTENANCE DEMONSTRATION¹²

Description	NO _x (tpd)	VOC (tpd)
a. 2014 Emissions Inventories (from Tables 2 and 3)	357.86	482.08
b. 2032 Emissions Inventories (from Tables 2 and 3)	263.58	487.06
c. Change in EI from 2014 to 2032 (line b minus line a)	– 94.28	+ 4.98
d. Percent change in EI from 2014 to 2032	– 26.34%	+ 1.03%

NO_x emissions are projected to decrease by approximately 94 tpd by 2032, which is about 26 percent less than the 2014 NO_x emission levels. VOC emissions are projected to increase by approximately 5 tpd by 2032, which is about 1 percent higher than the 2014 VOC emission levels. Because the projected reduction in NO_x emission (26%) is far greater than the projected increase in VOC emissions (1%), we propose that the TCEQ has offset the growth in VOC emissions with NO_x emissions reductions and demonstrated maintenance of the 1-hour and 1997 ozone NAAQS through 2032. We note that the projections for the on-road mobile source inventory for 2032, which TCEQ submitted as motor vehicle emissions budgets, are consistent with maintenance of the 1-hour and 1997 NAAQS.

3. Monitoring Network

The TCEQ has committed to continue to maintain an air monitoring network to meet regulatory requirements in the

HGB area to ensure maintenance of the 1-hour and 1997 ozone standards. Texas has committed to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into AQS in accordance with Federal guidelines through the end of the maintenance period in 2032.

4. Verification of Continued Attainment

The TCEQ has the legal authority to enforce and implement the requirements of the maintenance plan for the HGB area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined as necessary to correct any future failure to maintain the 1-hour and 1997 ozone NAAQS.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's EI. The TCEQ has committed to continue monitoring ozone levels according to an

EPA-approved monitoring plan. Should changes in the location of an ozone monitor become necessary, TCEQ will work with EPA to ensure the adequacy of the monitoring network. The TCEQ has further committed to continue to quality assure the monitoring data to meet the requirements of 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines.

In addition, to track future levels of emissions, TCEQ will continue to develop and submit to EPA updated EIs for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The most recent triennial inventory for Texas was compiled for 2014. Point source facilities covered by the Texas emission statement rule will continue to submit VOC and NO_x emissions on an annual basis as required by 30 TAC Chapter 101.10(d).

¹¹ The mobile source groups described by the TCEQ are on-road and non-road, including elevated ships. See the Texas Attainment Demonstration for the HGB Ozone Nonattainment Area (Docket ID: EPA–R06–OAR–2017–0053); HGB attainment SIP

Appendix C pgs. 37–39 and 62 (Docket ID: EPA–R06–OAR–2017–0053–0004); Manvel Croix Source Apportionment spreadsheet (Docket ID: EPA–R06–OAR–2017–0053–0008), and numerous other source

apportionment spreadsheets in the same Docket. 83 FR 24446, May 29, 2018.

¹² See our TSD for more detail on the State's submitted maintenance demonstration.

5. Contingency Plan

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by CAA section 175A, Texas has proposed a contingency plan for the HGB area to address future violations of the 1-hour and/or 1997 ozone NAAQS. The contingency measures proposed by the TCEQ include, but are not limited to, the following:

- Limit VOC emissions from dryers, filtration systems, and fugitive emissions from petroleum dry cleaning facilities.
- Decrease in the rule threshold triggering applicability to requirements, such as control and inspection requirements, for controlling flash emissions from fixed roof crude oil and condensate storage tanks.
- Require the application of low solar-absorptance paint to VOC storage tanks.
- Implement enhanced leak detection and repair program measures.
- Decrease the rule threshold triggering applicability to requirements for storage tanks, transport vessels, and marine vessels.
- Regulate pneumatic controllers used in oil and natural gas production, transmission of oil and natural gas, and natural gas processing.

The maintenance plan provides that a monitored and certified violation of the NAAQS triggers the requirement to consider, adopt, and implement the plan's contingency measures. The schedule and procedure for adoption and implementation by the State is no longer than 18 months following a monitored and certified violation of the

NAAQS. Given the estimated emissions in the Houston nonattainment area, we believe the proposed contingency measures are sufficient to address any potential future violations.

EPA is proposing that the TCEQ's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus, the maintenance plan SIP revision proposed by the TCEQ meets the requirements of CAA section 175A and EPA proposes to approve it as a revision to the Texas SIP.

III. Motor Vehicle Emissions Budgets

The HGB maintenance plan submission includes motor vehicle emissions budgets (MVEBs) for the last year of the maintenance plan (in this case 2032). MVEBs are used to conduct regional emissions analyses for transportation conformity purposes. *See* 40 CFR 93.118. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. As part of the interagency consultation process on setting MVEBs, TCEQ held discussions to determine what years to set MVEBs for the HGB area maintenance plan.

We note the HGB area already has adequate NO_x and VOC MVEBs for the 2008 ozone NAAQS. Therefore, the HGB area can continue to make conformity determinations for transportation plans, transportation improvement programs, and projects based on budgets for the 2008 ozone NAAQS as it has been doing, according to the requirements of the transportation conformity regulations at 40 CFR part 93.¹³ The Houston area currently demonstrates conformity to the more stringent 2008 and 2015 ozone NAAQS using MVEBs contained in the area's 2008 ozone NAAQS Reasonable Further Progress SIP revision (82 FR 26091, June 6, 2017). Therefore, EPA is not approving the submitted 2032 NO_x and VOC MVEBs for transportation conformity purposes. As noted previously, EPA is proposing to find that the projected emissions inventory which reflects these budgets are consistent with maintenance of the 1-hour and 8-hour standard.

¹³ *Transportation Conformity Guidance for the South Coast II Court Decision*, EPA-420-B-18-050. November 2018, available on EPA's web page at <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>.

IV. Evaluation of the HGB Alternative Section 185 Fee Equivalent Program

The CAA section 185 fee program requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. It requires each major stationary source of VOC located in an area that fails to attain by its attainment date to pay a fee to the state for each ton of VOC the source emits in excess of 80 percent of a baseline amount. CAA section 182(f) extends the application of this provision to major stationary sources of NO_x. In 1990, the CAA set the fee as \$5,000 per ton of VOC and NO_x emitted, which is adjusted for inflation, based on the Consumer Price Index, on an annual basis. For areas subject to section 185, fee collection is for each calendar year beginning after the attainment date, until the area is redesignated to attainment.¹⁴ More information on CAA section 185 is provided in our TSD. Because the HGB area failed to attain the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2007, the area became subject to section 185 for that standard.¹⁵

On January 5, 2010 EPA issued the memo "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS." ¹⁶ The guidance discussed options for the EPA approval of SIPs that included an equivalent alternative program to the section 185 fee program specified in the CAA when addressing anti-backsliding for a revoked ozone NAAQS under the principles of section 172(e). Section 172(e) requires EPA to develop regulations to ensure that controls in a nonattainment area are "not less stringent" than those that applied to the area before EPA revised a NAAQS to make it less stringent. Although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, 2008, and 2015, EPA has applied the principles in section 172(e) when revoking less stringent ozone standards. EPA allows a state to adopt an

¹⁴ Section 185 is an anti-backsliding requirement which would be terminated upon a showing that the five criteria of 107(d)(3)(E) are met. This action, if finalized, will terminate the requirement for a section 185 fee program.

¹⁵ Although the HGB area is also designated and classified as Severe for the 1997 8-hour ozone NAAQS, the section 185 fee program was not triggered for that standard, because the area attained the 1997 ozone NAAQS well before the Severe area attainment deadline of June 15, 2019. *See* 80 FR 81466, December 30, 2015.

¹⁶ *See* https://www.epa.gov/sites/production/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf.

alternative to CAA section 185 if the state demonstrates that the proposed alternative program is “not less stringent” than the direct application of CAA section 185. EPA has previously stated that one way to demonstrate this is to show that the alternative program provides equivalent or greater fees and/or emissions reductions directly attributable to the application of CAA section 185. Although the 2010 guidance was vacated and remanded by the D.C. Circuit on procedural grounds, the court did not prohibit alternative programs, stating “neither the statute nor our case law obviously precludes that alternative” (*NRDC v. EPA*, 643 F.3d 311 (D.C. Cir. 2011)). EPA approved alternative 185 fee equivalent programs in California for the San Joaquin Valley (77 FR, 50021, August 20, 2012) and the South Coast Air Quality Management District covering two 1-hour ozone nonattainment areas: (1) Los Angeles-South Coast Air Basin Area and (2) Southeast Desert Modified Air Quality Management Area (77 FR 74372, December 14, 2012) (upheld in *Natural Res. Def. Council v. EPA*, 779 F.3d 1119 (9th Cir. 2015)). More recently we approved an alternative 185 fee equivalent program for the New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area (84 FR 12511, April 2, 2019).

The Texas program: (1) Calculates the amount of fees that major sources would pay each year; (2) offsets the major source fees with fees collected in the HGB area for programs designed to reduce emissions from mobile sources; and (3) allows for major sources to request to fulfill all or part of their fee obligations with emission credits, emission allowances or a supplemental emission reduction project (if there are still major source fee obligations after offsetting with mobile source fees). The fees collected from mobile sources in the HGB area fund emission reductions through the (1) Texas Emissions Reduction Plan, (2) Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Repair Program (LIRAP) and (3) Local Initiative Project program. The Texas Emission Reduction Plan provides money to help replace, repower or retrofit diesel equipment to accelerate the introduction of cleaner diesel equipment. LIRAP provides money to assist owners with the repair or replacement of automobiles that fail the Inspection and Maintenance (I/M) program and that otherwise would receive a waiver and not be repaired. The Local Initiative Project program provides money for projects such as

improved enforcement of the I/M program. These programs all provide for emission reductions in the HGB area in the hard to reach mobile source sector.

In a letter dated December 4, 2018, TCEQ provided a reconciliation report summarizing the section 185 fee equivalency demonstration. The TCEQ report found that the fees collected for emission reduction projects in the HGB area more than fully offset the fees that would have been collected under a direct application of section 185 during the years 2012 to 2016.¹⁷

A detailed evaluation of the Texas section 185 alternative fee program is included in the TSD for this action. Based on our evaluation we are proposing to find that the Texas program proposed for approval is an equivalent section 185 fee program as it provides greater or equivalent fees and emission reductions than those that would be provided by major stationary sources alone. Thus, we are also proposing to approve 30 TAC Chapter 101, Subchapter B (Failure to Attain Fee) sections 101.100–101.102, 101.104, 101.106–101.110, 101.113, 101.116, 101.117, 101.118(a)(1), 101.118(a)(3) and 101.120–101.122. At this time, we are not taking action on 30 TAC sections 101.118(a)(2) and 101.118(b).¹⁸

V. Proposed Action

We are proposing to determine that the HGB area is continuing to attain the 1-hour and 1997 8-hour ozone NAAQS, and that Texas has met the CAA criteria for redesignation of this area. Therefore, the EPA is proposing to terminate all anti-backsliding obligations for the HGB area for the 1-hour and 1997 ozone NAAQS. The EPA is also proposing to approve 30 TAC sections 101.100–101.102, 101.104, 101.106–101.110, 101.113, 101.116, 101.117, 101.118(a)(1), 101.118(a)(3) and 101.120–101.122 as an alternative 185 fee equivalent program. We are also proposing to approve the plan for maintaining the 1-hour and 1997 ozone NAAQS through 2032 in the HGB area.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text

¹⁷ Before the *South Coast II* decision our approval of the HGB 1-hour redesignation substitute ended the obligation for a section 185 fee program in late 2015 (80 FR 63429, October 20, 2015).

¹⁸ Section 30 TAC 101.118(a)(2) allows for ending the failure to attain fee program through a finding of attainment by EPA. Section 30 TAC 101.118(b) allows for placing fee payment into abeyance if three consecutive years of quality-assured data resulting in a design value that did not exceed the 1-hour ozone standard, or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States, are submitted to the EPA.

that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

The actions in this proposal terminate statutory and regulatory requirements associated with prior federal revoked ozone standards and do not impose any additional regulatory requirements on sources beyond those imposed by state law. Therefore, this action does not in and of itself create any new requirements. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. For that reason, these actions:

- Are not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because they are not “significant regulatory actions” under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: May 9, 2019.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2019-09943 Filed 5-15-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R07-OAR-2019-0190; FRL-9993-27-Region 7]

Approval of Missouri Air Quality Implementation Plans; Redesignation of the Missouri Portion of the St. Louis-St. Charles-Farmington, MO-IL 2012 PM_{2.5} Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from the Missouri Department of Natural Resources (MoDNR) to redesignate the Missouri portion of the

St. Louis-St. Charles-Farmington, MO-IL fine particulate matter (PM_{2.5}) unclassifiable area ("St. Louis area" or "area") to unclassifiable/attainment for the 2012 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). The Missouri portion of the St. Louis area comprises of the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis. The EPA now has sufficient data to determine that the St. Louis area is in attainment of the 2012 PM_{2.5} NAAQS. Therefore, EPA is proposing to approve the state's December 11, 2018 request, and redesignate the area to unclassifiable/attainment for the 2012 PM_{2.5} NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the PM_{2.5} monitors in the area are in compliance with the 2012 PM_{2.5} NAAQS. The EPA will address the Illinois portion of the St. Louis area in a separate rulemaking action.

DATES: Comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2019-0190, to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7214, or by email at kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," and "our" refer to EPA.

Table of Contents

- I. Written Comments
- II. What is being addressed in this document?
- III. Background Information
- IV. What are the criteria for redesignating an area from unclassifiable to unclassifiable/attainment?
- V. What is the EPA's rationale for proposing to redesignate the area?
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2019-0190, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is being addressed in this document?

The EPA is proposing to approve MoDNR's request to change the designation of the Missouri portion of the St. Louis area from unclassifiable to unclassifiable/attainment for the 2012 PM_{2.5} NAAQS, based on quality-assured and certified monitoring data for 2015-2017, and proposing to approve that the Missouri portion of the St. Louis area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA.

III. Background Information

The Clean Air Act (CAA) establishes a process for air quality management through the establishment and implementation of the NAAQS. Upon promulgation of a new or revised NAAQS, section 107(d)(1) of the CAA requires EPA to designate areas as attainment, nonattainment, or unclassifiable. On December 14, 2012, the EPA promulgated a revised primary annual PM_{2.5} NAAQS to provide increased protection of public health and welfare from fine particle pollution (78 FR 3086, January 15, 2013). In that action, the EPA revised the primary annual PM_{2.5} standard, strengthening it from 15.0 micrograms per cubic meter (µg/m³) to 12.0 (µg/m³), which is attained when the three-year average of the annual arithmetic means does not exceed 12.0 (µg/m³). The EPA

established the standard based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On December 18, 2014, the EPA designated the majority of areas across the country as nonattainment, unclassifiable/attainment, or unclassifiable¹ for the 2012 PM_{2.5} NAAQS based upon air quality monitoring data from monitors for calendar years 2011–2013. *See* 80 FR 2206 (January 15, 2015).

The EPA initially designated the bi-state St. Louis area as unclassifiable based on ambient air quality data from 2011–2013. During that time period, the EPA identified data completeness issues with the ambient PM_{2.5} monitoring data in the state of Illinois. Although all monitors in Missouri were attaining the standard at the time of the initial designations, the lack of complete monitoring data in Illinois prevented EPA from being able to determine whether violations of the standard were occurring in the Illinois portion of the St. Louis area or whether emission sources in Missouri were contributing to any violations in Illinois. Therefore, the EPA designated the entire St. Louis MO-IL area as unclassifiable for the 2012 PM_{2.5} NAAQS.

IV. What are the criteria for redesignating an area from unclassifiable to unclassifiable/attainment?

Section 107(d)(3) of the CAA provides the framework for changing the area designations for any NAAQS pollutants. Section 107(d)(3)(A) provides that the Administrator may notify the Governor of any state that the designation of an area should be revised “on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.” The CAA further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor’s own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request.

When approving or denying a request to redesignate an area, EPA bases its decision on the air quality data for the area as well as the considerations provided under section 107(d)(3)(A).² In keeping with section 107(d)(1)(A), areas that are redesignated to unclassifiable/attainment must meet the requirements for attainment areas and thus must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not

meet the NAAQS. The relevant monitoring data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database. The designated monitors generally should have remained at the same location for the duration of the monitoring period upon which the redesignation request is based.³

V. What is the EPA’s rationale for proposing to redesignate the area?

To redesignate the area from unclassifiable to unclassifiable/attainment for the 2012 primary annual PM_{2.5} NAAQS, the three-year average of the annual arithmetic means does not exceed 12.0 (µg/m³) at all monitoring sites in the area over the full three-year period, as determined in accordance with 40 CFR 50.18 and appendix N of part 50. The EPA reviewed PM_{2.5} monitoring data from the monitors in the St. Louis area for the 2012 PM_{2.5} NAAQS for the three-year period from 2015–2017. As summarized in table 1, the design values for the monitors in the area for the 2015–2017 are below the 2012 PM_{2.5} NAAQS. These data have been quality-assured, certified, and recorded in AQS by Missouri and Illinois, and the monitoring location has not changed during the monitoring period.

TABLE 1—ANNUAL PM_{2.5} DESIGN VALUES FOR THE ST. LOUIS-ST. CHARLES-FARMINGTON, MO-IL AREA

State	County	Monitor	AQS site ID	Annual design values (µg/m ³)			2015–2017 Design value
				2015	2016	2017	
Missouri	St. Louis City	Blair Street (FRM)	29–510–0085	10.4	8.5	7.9	8.9
Missouri	St. Louis City	South Broadway	29–510–0007	11.1	8.1	7.8	9.0
Missouri	Jefferson	Arnold West	29–099–0019	11.6	8.3	8.2	9.3
Missouri	St. Louis County	Ladue	29–189–3001	10.3	8.7	9.4	9.5
Missouri	St. Louis City	Forest Park	29–510–0094	9.2	8.7	8.3	8.7
Illinois	Madison	Alton	17–119–2009	9.0	8.8	8.7	8.8
Illinois	Madison	Wood River	17–119–3007	9.1	8.7	8.3	8.7
Illinois	Madison	Granite City	17–119–1007	10.4	9.1	9.6	9.7
Illinois	St. Clair	East St. Louis	17–163–0010	10.7	10.0	8.8	9.8

The EPA is proposing to redesignate the Missouri portion of the St. Louis area from unclassifiable to unclassifiable/attainment because the

three-year design value meets the 2012 primary annual PM_{2.5} NAAQS.

VI. Proposed Action

The EPA is proposing to approve the MoDNR’s December 11, 2018, request to redesignate the Missouri’s portion of the St. Louis area from unclassifiable to

¹ For the initial PM area designations in 2014 (for the 2012 annual PM_{2.5} NAAQS), EPA used a designation category of “unclassifiable/attainment” for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category “unclassifiable” for areas in which EPA could not

determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the “attainment” category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

² While CAA section 107(d)(3)(E) also lists specific requirements for redesignations, those requirements only apply to redesignations of

nonattainment areas to attainment and therefore are not applicable in the context of a redesignation of an area from unclassifiable to unclassifiable/attainment.

³ See “Procedures for Processing Requests to Redesignate Areas to Attainment”, Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the “Calcagni Memorandum”).

unclassifiable/attainment for the 2012 primary annual PM_{2.5} NAAQS. If finalized, approval of the redesignation request would change the legal designation, found at 40 CFR part 81, of the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis from unclassifiable to unclassifiable/attainment for the 2012 primary annual PM_{2.5} NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, a redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not create any new requirements. Accordingly, this action merely proposes to redesignate an area to unclassifiable/attainment and does not impose additional requirements. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed action is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: May 8, 2019.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 81 as set forth below:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

- 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

- 2. Section 81.326 is amended by revising the entry for “St. Louis Area, MO–IL” in the table entitled “Missouri—2012 Annual PM_{2.5} NAAQS” to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—2012 ANNUAL PM_{2.5} NAAQS [Primary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
St. Louis Area MO–IL:				
Franklin County	[Date of publication of the final rule in the Federal Register , [Federal Register citation of the final rule].	Unclassifiable/Attainment.		
Jefferson County	[Date of publication of the final rule in the Federal Register , [Federal Register citation of the final rule].	Unclassifiable/Attainment.		
St. Charles County	[Date of publication of the final rule in the Federal Register , [Federal Register citation of the final rule].	Unclassifiable/Attainment.		
St. Louis County	[Date of publication of the final rule in the Federal Register , [Federal Register citation of the final rule].	Unclassifiable/Attainment.		
St. Louis City	[Date of publication of the final rule in the Federal Register , [Federal Register citation of the final rule].	Unclassifiable/Attainment.		
*	*	*	*	*

¹ Includes areas of Indian country located in each county or area, except as otherwise specified.

² This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2019–10189 Filed 5–15–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 648****[Docket No. 190214116–9116–01]****RIN 0648–BI69****Fisheries of the Northeastern United
States; Northeast Multispecies
Fishery; Fishing Year 2019
Recreational Management Measures***Correction*

In proposed rule document 2019–
09685 beginning on page 20609 in the

issue of May 10, 2019, make the
following change:

On page 20610 in Table 2, in the
fourth line, in the third column “GOM
Haddock-Minimum Size”, “15” (31.1
cm)” should read “17” (43.2 cm)”

[FR Doc. C1–2019–09685 Filed 5–15–19; 8:45 am]

BILLING CODE 1301–00–D

Notices

Federal Register

Vol. 84, No. 95

Thursday, May 16, 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

National Institute of Food and Agriculture

Designation as a Non Land Grant College of Agriculture

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of revision to Non Land Grant College of Agriculture (NLGCA) definition and invitation to request NLGCA designation.

SUMMARY: Section 7102 of the Agriculture Act of 2018 revises the definition of a Non Land Grant College of Agriculture and requires the National Institute of Food and Agriculture (NIFA) ensure compliance with the revised definition by proposing revocation of Non Land Grant designations where prior designees do not comply with the new NLGCA definition. All institutions certified prior to December 21, 2018 must reapply for certification and meet the new criteria for NLGCA certification. NLGCA designation satisfies the eligibility requirement for the Capacity Building Grants for Non-Land Grant Colleges of Agriculture program.

DATES: NIFA has updated its process for designating NLGCA and is inviting new requests for NLGCA designation effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joanna Moore, Policy Specialist, jmoore@nifa.usda.gov, 202-690-6011.

SUPPLEMENTARY INFORMATION: Section 7102 of the 2018 Agriculture Improvement Act:

(1) Amended the definition of “NLGCA Institution” and “non-land-grant College of agriculture”. In order for an institution to qualify as a NLGCA, it must be a public college or university offering a baccalaureate or higher degree in the study of agricultural sciences, forestry, or both, which is any of the 32

specified areas of study: Agricultural and domestic animal services; Agricultural and extension education services; Agricultural and food products processing; Agricultural business and management; Agricultural communication or agricultural journalism; Agricultural economics; Agricultural engineering; Agricultural mechanization; Agricultural production operations; Agricultural public services; Agriculture; Animal sciences; Applied horticulture or horticulture operations; Aquaculture; Equestrian/Equine Studies; Floriculture or floristry operations and management; Food science; Forest sciences and biology; Forestry; Greenhouse operations and management; International agriculture; Natural resource economics; Natural resources management and policy; Natural resources or conservation; Ornamental horticulture; Plant nursery operations and management; Plant sciences; Range science and management; Soil sciences; Turf and turfgrass management; Urban forestry; and Wood science and wood products or pulp or paper technology.

(2) Removed Opt-in, Opt-out language for Hispanic Serving Agricultural Colleges and Universities (HSACU) and McIntire-Stennis Colleges and Universities.

(3) Required, within 90 days of enactment of the Agriculture Improvement Act of 2018, that NIFA establish a process of reviewing NLGCA designees to ensure compliance with the revised definition and to propose revocation of the designation where NLGCA’s were found noncompliant.

Requesting NLGCA Designation

A flow chart describing the process for determining eligibility is available at <https://nifa.usda.gov/program/capacity-building-grants-non-land-grant-colleges-agriculture-program>. To determine programmatic fit in Areas of Study, NIFA will utilize the Department of Education’s Classification of Instructional Programs (CIP) definitions as a guideline. These are available for reference at <https://nces.ed.gov/ipeds/cipcode>. You may request consideration of an additional Area of Study by the Secretary of Agriculture. The requirements for this are detailed on the web form mentioned below. A determination will be made within 90

days of submitting a request for the inclusion of a new Area of Study.

All interested institutions who meet the above criteria must apply for NLGCA certification. All institutions certified prior to December 21, 2018 must reapply for certification and meet the new criteria for NLGCA certification; Previous NLGCA certification is not a guarantee of continued certification.

To request that NIFA provide certification of NLGCA status, an Authorized Representative (AR) must go to <http://www.nifa.usda.gov/form/form.html> and submit a web-based form indicating the institution meets the qualifications. By submitting this request electronically, the AR certifies that they have the authority to make this request on behalf of their institution.

Receipt of NLGCA Designation

Requests for NLGCA designation are accepted on a rolling basis. Within 30 days of submission, NIFA will provide the administrative point of contact specified on the request, with a certification of NLGCA designation or a response indicating why the request for certification is being denied. Future Requests for Application issued by NIFA may require NLGCA certification.

Done at Washington, DC, on May 7, 2019.

Steve Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2019-10105 Filed 5-15-19; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Information Collection Activity; Comment Request

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Department of Agriculture (USDA) Rural Housing Service (RHS) invites comments on this information collection for Community Facilities Technical Assistance and Training Grant Program, for which the Agency intends to request approval from the Office of Management and Budget (OMB) will be requested. The Community Facilities Technical

Assistance and Training (TAT) is a competitive grant program, which RHS administers. Section 306 of the Consolidated Farm and Rural Development Act (CONACT), was amended by Section 6006 of the Agriculture Act of 2014 to establish the Community Facilities Technical Assistance and Training Grant. Section 6006 authorized grants be made to public bodies and private nonprofit corporations (including Indian Tribes) that will serve rural areas for the purpose of enabling the grantees to provide to associations technical assistance and training with respect to essential community facilities authorized under Section 306(a)(1) of the Consolidated Farm and Rural Development Act. Grants can be made for 100 percent of the cost of assistance. **DATES:** Comments on this notice must be received by July 15, 2019.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email Thomas.dickson@usda.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for revision.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by any of the following methods:

- **Mail:** Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW, STOP 1522,

Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: Thomas.Dickson@wdc.usda.gov.

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

Title: 7 CFR 3570 Community Facilities Technical Assistance and Training Grant Program.

OMB Control Number: 0575–0198.

Type of Request: Revision of a currently approved information collection.

Abstract: The Community Facilities Technical Assistance and Training (TAT) is a competitive grant program which the Rural Housing Service (RHS) administers. Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, was amended by Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) to establish the Community Facilities Technical Assistance and Training Grant. Section 6006 authorized grants be made to public bodies and private nonprofit corporations (including Indian Tribes) that will serve rural areas for the purpose of enabling the grantees to provide to associations technical assistance and training with respect to essential community facilities authorized under Section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)). Grants can be made for 100 percent of the cost of assistance.

Need and Use of the Information: Eligible entities receive TAT grants to help small rural communities or areas identify and solve problems relating to essential community facilities. The grant recipients may provide technical assistance to public bodies and private nonprofit corporations. Applicants applying for TAT grants must submit an application, which includes an application form, narrative proposal, various other forms, certifications, and supplemental information. The Rural Development State Offices and the RHS National Office staff will use the information collected to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Not-for-Profit Institutions, Public Bodies and Tribal Organizations.

Estimated Number of Respondents: 51.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,397.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center, at (202)772–1172, Email: robin.m.jones@wdc.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–10156 Filed 5–15–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture's Rural Utilities Service (RUS), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 15, 2019.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email thomas.dickson@usda.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension of an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information

including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: thomas.dickson@usda.gov.

Title: Rural Energy Savings Program (RESP).

OMB Control Number: 0572–0151.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA, through the RUS, provides RESP loans to Eligible entities that agree to, in turn, make loans to Qualified consumers such as rural families and small businesses for energy efficiency measures and cost-effective renewable energy or energy storage systems. These loans are made available under the authority of Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended, (Section 6407) and Title VII, Section 741 of the Consolidated Appropriations Act, 2018. Eligible Energy efficiency measures must be for or at a property or properties served by a RESP borrower, using commercially available technologies that would allow Qualified consumers to decrease their energy use or costs through cost-effective measures including structural improvements to the structure. Loans made by RESP borrowers under this program may be repaid through charges added to the Qualified consumer's bill for the property or properties for, or at which, energy efficiencies are or will be implemented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.32 hour per response.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 33.

Estimated Total Annual Responses: 225.

Estimated Number of Responses per Respondent: 6.8.

Estimated Total Annual Burden on Respondents: 1,422 Hours.

Copies of this information collection can be obtained from MaryPat Daskal, Management Analyst, Rural

Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email: MaryPat.Daskal@usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Chad Rupe,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019–10192 Filed 5–15–19; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning 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 (FACA) that a meeting of the Colorado Advisory Committee to the Commission will convene by conference call at 2:00 p.m. (MDT) on Friday, June 14, 2019. The purpose of the meeting is to review and vote on the draft report on the naturalization backlog and decide next steps for the report. An update on the potential to hold a community forum will also be provided.

DATES: Friday, June 14, 2019, at 2:00 p.m. (MDT).

Public Call-In Information: Conference call number: 1–800–682–0995 and conference call ID: 7996743.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, ehohor@usccr.gov or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–682–0995 and conference call ID: 7996743.

Please be advised that, before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and 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 provided.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–682–0995 and conference call 7996743.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at ehohor@usccr.gov. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://gsageo.force.com/FACA/PublicViewCommitteeDetails?id=a10t0000001gzksAAA>; click the “Meeting Details” and “Documents” links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda: Friday, June 14, 2019; 2:00 p.m. (MDT)

- I. Roll Call
- II. Discuss and Vote on Report: Naturalization Backlog
- III. Next Steps for the Report
- IV. Community Forum Update
- V. Other Business
- VI. Open Comment
- VII. Adjournment

Dated: May 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–10180 Filed 5–15–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: 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 (FACA), that a briefing meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 p.m. (EDT) on Tuesday, June 11, 2019, at Hinckley Allen & Snyder LLP, 100 Westminster Street, Providence, RI 02903. The purpose of the briefing is to hear from advocates and officials about hate crimes in Rhode Island.

DATES: Tuesday, June 11, 2019 at 12:00 p.m. (EDT).

ADDRESSES: Hinckley Allen & Snyder LLP, 100 Westminster St., #1500, Providence, RI 02903.

Public Call Information: Dial: 1-877-260-1479, Conference ID: 7692511.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at ero@usccr.gov, or 202-376-7533.

SUPPLEMENTARY INFORMATION: Members of the public may also listen to the discussion through the above listed toll free number. As well as attending in person, any interested member of the public may call the above listed number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Persons who plan to attend the meeting and who require other accommodations, please contact Evelyn Bohor at ebohor@usccr.gov at least ten (10) working days before the scheduled date of the meeting.

Note: To expedite entrance into Hinckley Allen & Snyder, please contact ERO at 202-376-7533 or ero@usccr.gov.

Members of the public are invited to submit written comments; the comments must be received in the regional office by Thursday, July 11, 2019. Written comments may be mailed

to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376-7548, or emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire additional information may contact the Eastern Regional Office at (202) 376-7533.

The activities of this advisory committee, including records and documents discussed during the meeting, will be available for public viewing, as they become available at: <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gz4AAA>. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, www.usccr.gov, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Tuesday, June 11, 2019; 12:00 p.m. (EDT)

Welcome and Introductions
Briefing on Hate Crimes
Open Comment
Adjourn

Dated: May 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-10181 Filed 5-15-19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Nebraska 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 Nebraska Advisory Committee (Committee) will hold a meeting on Tuesday June 4, 2019 at 2:00 p.m. Central time. The Committee will review and discuss the final agenda and logistics for their upcoming hearing on civil rights and prison conditions for incarcerated individuals who are also living with mental illness.

DATES: The meeting will take place on Tuesday June 4, 2019 at 2 p.m. Central.

Public Call Information: Dial: 800-682-0995, Conference ID: 7135769.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at mwojnaroski@usccr.gov or (312) 353-8311.

SUPPLEMENTARY INFORMATION: 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, Nebraska 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 Roll Call

Civil Rights in Nebraska: Prisons and Mental Health

Future Plans and Actions

Public Comment

Adjournment

Dated: May 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–10182 Filed 5–15–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine 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 Maine Advisory Committee (Committee) will hold a meeting on Friday, May 31, 2019, at 3:00 p.m. (EDT) for the purpose of reviewing and voting on its report on the criminalization of people with mental illnesses. The Committee will also discuss holding a mini-briefing on hate crimes in Maine.

DATES: The meeting will be held on Friday, May 31, 2019, at 3:00 p.m. EDT.

Public Call Information: Dial: 1–855–719–5012, Conference ID: 9835301.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at ero@usccr.gov or 202–376–7533.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number: 1–855–719–5012 and conference ID number: 9835301.

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 Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave., Suite 1150, Washington, DC 20425. They may also be faxed to the Commission at (202) 376–7548, or emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

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, Maine 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: Friday, May 31, 2019 at 3:00 p.m. (EDT)

- Welcome and Roll Call
- Review and Vote on Report: Criminalization of People with Mental Illnesses
- Discussion on Hate Crimes mini-briefing
- Other Business
- Public Comment
- Adjournment

Dated: May 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–10178 Filed 5–15–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings 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 Wednesday May 29, 2019 at 10:00 a.m. Central time. The Committee will discuss next steps in their study of civil rights and criminal justice in the state.

DATES: The meeting will take place on Wednesday May 29, 2019 at 10:00 a.m. Central.

Public Call Information: Dial: 877–260–1479, Conference ID: 5347680.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnarowski, DFO, at mwojnarowski@usccr.gov or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. These meetings are available to the public through the above call in numbers. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

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 Roll Call
Civil Rights in Arkansas: Mass Incarceration

Future Plans and Actions
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 13, 2019.

David Mussatt,
Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–10179 Filed 5–15–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received

petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[05/01/2019 Through 05/09/2019]

Firm name	Firm address	Date accepted for investigation	Product(s)
Maraji Capital Management, LLC d/b/a Ultimex.	1981 West 64th Lane, Denver, CO 80221.	5/2/2019	The firm manufactures custom printed materials.
Trendway Corporation	13467 Quincy Street, Holland, MI 49424.	5/3/2019	The firm manufactures office furniture and movable walls.
S.M. Engineering Company, Inc.	83 Chestnut Street, North Attleboro, MA 02761.	5/9/2019	The firm manufactures industrial heat treating furnaces.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,
Program Analyst.

[FR Doc. 2019–10108 Filed 5–15–19; 8:45 am]

BILLING CODE 3510-WH-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Members—Revised

DATES: Please submit nominations by June 15, 2019.

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce is announcing its recruitment of candidates to serve on one of its seven Technical Advisory Committees ("TACs" or "Committees"). TAC members advise the Department of Commerce on the technical parameters for export controls applicable to dual-use items (commodities, software, and technology) and on the administration of those controls. The TACs are composed of representatives from industry, academia, and the U.S. Government and reflect diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of items currently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls. Representation from the private sector is balanced to the extent possible among large and small firms.

Six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within specified areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List

Category 2 (materials processing); Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment); and the Emerging Technology TAC (identification of emerging and foundational technologies that may be developed over a period of five to ten years with potential dual-use applications). The seventh TAC, the Regulations and Procedures TAC, focuses on the Export Administration Regulations (EAR) and procedures for implementing the EAR.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. TAC members must obtain secret-level clearances prior to their appointment. These clearances are necessary so that members may be permitted access to classified information that may be needed to formulate recommendations to the Department of Commerce. Applicants are strongly encouraged to review materials and information on each Committee website, including the Committee's charter, to gain an understanding of each Committee's responsibilities, matters on which the Committee will provide recommendations, and expectations for members. Members of any of the seven

TACs may not be registered as foreign agents under the Foreign Agents Registration Act. No TAC member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). TAC members will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in becoming a TAC member, please provide the following information: 1. Name of applicant; 2. affirmation of U.S. citizenship; 3. organizational affiliation and title, as appropriate; 4. mailing address; 5. work telephone number; 6. email address; 7. summary of qualifications for membership; 8. An affirmative statement that the candidate will be able to meet the expected commitments of Committee work. Committee work includes: (a) Attending in-person/teleconference Committee meetings roughly four times per year (lasting 1–2 days each); (b) undertaking additional work outside of full Committee meetings including subcommittee conference calls or meetings as needed, and (c) frequently drafting, preparing or commenting on proposed recommendations to be evaluated at Committee meetings. Finally, candidates must provide an

affirmative statement that they meet all Committee eligibility requirements.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–10122 Filed 5–15–19; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review 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.

FOR FURTHER INFORMATION CONTACT: Sara Young (Permit No. 22187), Malcolm Mohead (Permit Nos. 21857, 22078, and 22324), Courtney Smith (Permit No. 22141), and Jennifer Skidmore (Permit No. 22723); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to www.federalregister.gov and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous Federal Register notice	Permit or amendment issuance date
21857	0648–XG655	Tonya Wiley, Havenworth Coastal Conservation, 5120 Beacon Road, Palmetto, FL 34221.	83 FR 63833, December 12, 2018.	April 1, 2019.
22078	0648–XG655	The NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Theo Brainerd, Ph.D.).	83 FR 63833, December 12, 2018.	April 1, 2019.
22141	0648–XG516	Samuel Wasser, Ph.D., University of Washington, Department of Biology, P.O. Box 351800, Seattle, WA 98195.	84 FR 1428, February 4, 2019.	April 10, 2019.
22187	0648–XG540	Heather E. Liwanag, Ph.D., 1 Grand Avenue, San Luis Obispo, CA 93407.	83 FR 66250, December 26, 2019.	April 10, 2019.
22324	0648–XG655	The University of Florida, Florida Museum of Natural History, Dickinson Hall, Gainesville, FL 32611 (Responsible Party: Gavin Naylor, Ph.D.).	83 FR 63833, December 12, 2018.	April 1, 2019.
22723	0648–XG852	Sean Todd, Ph.D., College of the Atlantic, 105 Eden Street, Bar Harbor, ME 04609.	84 FR 9094, March 13, 2019.	April 23, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such

endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (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.*), and the regulations governing the taking, importing, and exporting of endangered and threatened

species (50 CFR parts 222–226), as applicable.

Dated: May 13, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–10162 Filed 5–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-B110

Atlantic Highly Migratory Species; Spatial Fisheries Management

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact analysis and hold scoping meetings; availability of issues and options paper; request for comments.

SUMMARY: NMFS announces its intent to prepare a draft environmental impact analysis for an action to consider options to perform research and collect data in areas closed to or restricting fishing and gear types for highly migratory species (HMS) in support of and to evaluate spatial fisheries management. Strategies to facilitate research and data collection in these areas could improve sustainable management of HMS. This action will consider ways to perform such research and data collection. To gather input from the public, NMFS also announces the availability of an Issues and Options Paper for Research and Data Collection in Support of Spatial Fisheries Management (Issues and Options Paper) that outlines possible strategies to perform research and collect data in areas that currently prohibit or restrict commercial and/or recreational fishing for HMS. Fishery-dependent data is vital in informing and supporting effective fisheries management, and areas that restrict fishing effort often have a commensurate decrease in fishery-dependent data collection. In addition, NMFS will hold scoping meetings to gather public comment on potential research and data collection options. Because constituents may be interested in several ongoing related rulemakings, these scoping meetings may be held in conjunction with scoping meetings for Amendment 13 (review of bluefin tuna measures including the Individual Bluefin Tuna Quota (IBQ) Program and quota allocations) and 14 (review of annual catch limits for sharks) to the 2006 Consolidated Atlantic HMS Fishery Management Plan. NMFS will announce the date and times for the scoping meetings in a separate **Federal Register** notice at a later date. NMFS requests comments on the approaches presented in the Issues and Options Paper as well as comments on or identification of

other approaches that may warrant consideration.

DATES: Written comments on this NOI and the Issues and Options Paper must be received on or before July 31, 2019. NMFS is holding scoping meetings during the public comment period and will announce the date and times for the scoping meetings in a separate **Federal Register** notice at a later date.

ADDRESSES: Electronic copies of the Issues and Options Paper may also be obtained on the internet at: <https://www.fisheries.noaa.gov/action/research-and-data-collection-support-spatial-fisheries-management>. You may submit comments, identified by “NOAA-NMFS-2019-0035”, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2019-0035, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Karyl Brewster-Geisz, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, or 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 to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz by phone at (301) 427-8503 or Tobey Curtis by phone at (978) 281-9260, or online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

SUPPLEMENTARY INFORMATION:**Background**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is the principal law governing marine fisheries in the U.S. and includes ten National Standards to guide fishery conservation and management. The Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving, on a

continuing basis, the optimum yield from each fishery (National Standard 1). It also requires that fishery “conservation and management measures shall be based upon the best scientific information available.” (National Standard 2). Other laws, such as the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), require NMFS to limit interactions with certain species affected by federal actions, such as permitted fishery operations. NMFS employs a variety of conservation and management measures to maintain appropriate levels of catch consistent with applicable science-based quotas or other management goals, to limit bycatch to the extent practicable, and to limit interactions with protected species as required. These measures include “spatial management techniques,” which refers to a suite of fisheries conservation and management measures that are based on geographic area, such as closed areas. Closed areas are typically discrete geographic areas where certain types of fishing are restricted or prohibited for limited periods or the entire year. Ideally, closed areas overlap in space and time with the species habitat and/or life stages in need of protection. Closed areas can be particularly effective for reducing fishing mortality by certain types of fishing to near zero within the designated areas, because species in need of protection are not in danger of catch or interaction with those fishing gears, even incidentally.

Although an effective management tool for achieving certain objectives, closed areas also reduce access to valuable target species, and eliminate the ability to gather some fishery-dependent data within the areas. Fishery-dependent data are information collected during normal fishing operations (e.g., catch composition, bycatch rates, fishing effort), and are a vital and cost-effective source of information for fisheries management. Such data have been critical in determining stock status, assessing bycatch levels, and in meeting other fishery management needs. In some instances, fishery-dependent data may be the only data from a fishery that are cost-effective and feasible when considering research and budgetary constraints. If normal fishing operations are curtailed or prohibited, as with closed areas, fishery-dependent data collection can be negatively affected and create data gaps that can have implications across multiple fisheries, such as a reduced understanding of species distribution and stock status.

Ideally, when a fishery closure is implemented, fishery-independent monitoring can continue to take place in the closed area in order to assess the closure's success and continued appropriateness over time.

Unfortunately, fishery-independent monitoring programs can be expensive, and resources to fund such research may not be readily available. In such cases, it may be appropriate to find ways to gather fishery-dependent data from active fisheries to make determinations about the effectiveness and appropriateness of a closed area, even though otherwise-applicable closed area restrictions may not allow such fishing. Nevertheless, prudent management requires that the benefits of closed areas be periodically reviewed to evaluate if a closed area's objectives are still being met, considering changes in fishery conditions, such as changes in fishing effort, fleet composition, stock status, and environmental changes. The ocean is a highly dynamic environment and long-term shifts in fish and habitat distributions can potentially undermine conservation and management effectiveness in these closed areas if they remain static.

NMFS has implemented a number of closed areas that curtail or prohibit fishing for Atlantic HMS (tunas, sharks, swordfish, and billfish). These include areas that restrict all gears targeting HMS such as the Edges 40-Fathom Contour, areas that restrict pelagic longline gear such as the Charleston Bump, areas that restrict bottom longline gear such as the Mid-Atlantic Closure, areas that restrict gillnet gear such as the Southeast U.S. Restricted Area, and areas that restrict some recreational HMS fishing such as Madison-Swanson and Steamboat Lumps Marine Protected Areas. Some goals of certain closed areas are still relevant, such as conserving protected resources under the ESA or MMPA or effectively managing and rebuilding overfished stocks under the Magnuson-Stevens Act. However, some goals may no longer be as relevant, such as reducing fishing pressure on now-rebuilt stocks (such as North Atlantic swordfish), or the introduction of other management measures that achieve the intended conservation goals may reduce the need for the closed areas.

Furthermore, reductions in fishing effort in one area can displace fishing effort to other areas, with possible adverse impacts. HMS closed areas should be periodically evaluated for their utility in meeting management goals and legal obligations, including those under the ESA, MMPA, and the Magnuson-

Stevens Act. Such a review would include ensuring that closed areas are appropriately placed to achieve current conservation objectives and remain appropriate in light of other management measures.

The Issues and Options Paper explores different approaches to conduct research and collect data in closed areas in support of HMS management. As described above, closed area data collection is needed for several reasons. First, in most cases, no fisheries data has been collected in the closed areas using affected HMS gears during times when the closures are in effect. This lack of data complicates, and may compromise, effective management of HMS. To maintain a sustainable fishery that maximizes access to fishery resources while achieving conservation goals, fishery managers need current and relevant catch data, along with protected resource interaction information. While closed areas can be effective at achieving management goals and objectives, such as curtailing or eliminating fishing mortality and bycatch interactions within the area, fishery managers need information to assess the continued effectiveness of the closed areas in meeting the objectives. These closures may need to be moved, reduced, or expanded to meet the original goals. However, without recent catch and interaction data, it is difficult to measure management success or shortcomings.

Second, the original goals of the closure may no longer be relevant. For example, if a closure was implemented to reduce fishing mortality of an overfished stock, the closure may no longer be needed if that stock is rebuilt. Without data from the closed areas, fishery managers cannot assess whether the closed areas are still needed to provide ancillary benefits to other species or whether the areas need to be modified.

Third, closed areas may be redundant or obsolete in the context of new management measures. If the original management goals of the closure are being met through more recent management measures, it is possible that the closure warrants reconsideration or modification. Data collection can help to determine whether closed area modifications are needed in light of more recent management measures.

Fourth, assessing the impact of closed areas through data collection can help achieve other Agency goals. For example, it is NMFS' goal to more fully utilize swordfish quota allocated by the International Commission for the

Conservation of Atlantic Tunas (ICCAT). If some existing closed areas affect the U.S. fleet's ability to harvest the resource without offering needed conservation benefits, due to one of the above reasons, those closed areas may warrant modification. The seafood trade imbalance is another Agency priority that could be impacted by inefficient closed areas. If closed areas reduce domestic catch without providing conservation benefits, and that reduced catch increases demand for foreign imports, the areas may warrant modification. While addressing goals such as full utilization of the swordfish quota or reducing the seafood trade imbalance, consideration must be given to possible adverse impacts, such as increased gear conflicts. Answering these questions depends on high-quality data collection in the relevant areas with the relevant gears during the relevant times.

The Issues and Options Paper explores different approaches to collect data in areas closed to HMS fishing in support of HMS management. The first step in considering ways to collect data and perform research in closed areas is publication of the Issues and Options Paper, which summarizes current spatial management of HMS and presents possible strategies to collect data and perform research in closed areas that affect HMS fishing. NMFS requests comments on the presented approaches as well as other approaches that should be considered.

NMFS has several ongoing actions affecting HMS management that are, or soon will be, available for public comment. While each of these actions are separate, they are related in some ways, and the comment periods may overlap. Depending on the outcomes, each action could have impacts on the other actions. To the extent any closed areas or other spatial management measures are affected or altered by these other actions, NMFS will take that into account and appropriately update the areas under consideration in this action.

NMFS recently released its "Draft Three-Year Review of the Individual Bluefin Quota (IBQ) Program." The IBQ Program, adopted in Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7), is a catch share program that introduced individual vessel accountability for bluefin bycatch in the pelagic longline fishery. Formal reviews of such catch share programs are required to evaluate whether their objectives are met. In Amendment 7, NMFS proposed and finalized a plan to formally evaluate the success and performance of the IBQ Program after three years of operation and to provide

the HMS Advisory Panel with a publicly-available written document with its findings. This review is expected to be finalized in September 2019 after consideration by the HMS Advisory Panel.

NMFS also recently released a document (Amendment 13 Issues and Options Paper) for use in 2019 for scoping, a public process during which NMFS will consider a range of issues and objectives, as well as possible options for bluefin tuna management. The options being presented in the Issues and Options Paper consider the preliminary results of the Draft Three-Year Review and respond to recent changes in the bluefin fishery and input from the public and HMS Advisory Panel. The options include refining the IBQ Program; reassessing allocation of bluefin tuna quotas (including the potential elimination or phasing out of the Purse Seine category); and other regulatory provisions regarding bluefin directed fisheries and bycatch in the pelagic longline fishery, to determine if existing measures are the best means of achieving current management objectives for bluefin tuna management. During scoping, public feedback will be accepted via written comments or scoping meetings as described in separate **Federal Register** notices.

NMFS also is currently in the process of developing a Proposed Rule Modifying Pelagic Longline Bluefin Tuna Area-Based and Weak Hook Management Measures. To analyze the potential environmental effects of a range of alternatives, NMFS recently released a Draft Environmental Impact Statement (DEIS). The DEIS evaluates whether current area-based and gear management measures remain necessary to reduce and/or maintain low numbers of bluefin tuna discards and interactions in the pelagic longline fishery, given more recent management measures, including the IBQ Program. The DEIS prefers alternatives that undertake a process to evaluate the need for the Northeastern United States Closed Area and the Gulf of Mexico Gear Restricted Area; removes the Cape Hatteras Gear Restricted Area; and adjusts the Gulf of Mexico weak hook effective period from year-round to seasonal (January–June). The comment period for the DEIS and proposed rule are open through July 31, 2019. NMFS is holding four public hearings across the Gulf of Mexico and Atlantic Coast. There will also be two webinars that will serve as public hearings for interested members of the public from all geographic locations. After consideration of public comment, NMFS expects to finalize the rule in the late Fall of 2019. The proposed rule

related to this DEIS is expected to be released shortly.

Finally, NMFS has also recently published an Issues and Options Paper for Amendment 14, which will review annual catch limits and reference points for sharks. This action could result in a different process for establishing the annual catch limits for sharks, and therefore could affect all fishermen, commercial and recreational, that target or incidentally catch sharks. During scoping, public feedback will be accepted via written comments or at scoping meetings as described in separate **Federal Register** notices.

Scoping Process

NMFS encourages participation, by all persons affected or otherwise interested in recreational and commercial HMS fishing, in the process to determine the scope and significance of options to be analyzed and considered in a draft environmental impact analysis and regulatory action. All such persons are encouraged to submit written comments (see **ADDRESSES**), or comment at one of the scoping meetings or public webinar. Persons submitting comments are welcome to address the specific measures in the Issues and Options Paper.

NMFS intends to hold scoping meetings in the geographic areas that may be affected by these measures, including locations on the Atlantic and Gulf of Mexico coasts. NMFS will announce the date and times for the scoping meetings in a separate **Federal Register** notice at a later date. After public comment has been gathered and analyzed, NMFS will determine if it is necessary to proceed with preparation of a draft environmental impact analysis and proposed rule, which would include additional opportunities for public comment. The scope of the draft environmental impact analysis (whether an environmental assessment or environmental impact statement) would depend on the scope and potential effects of the agency action being considered and would consist of the range of actions, alternatives, and impacts to be considered. This scoping process also will identify, and possibly eliminate from further detailed analysis, issues that may not meet the purpose and need of the action.

The process of developing any resulting regulatory action is expected to take approximately two years. Until the draft environmental impact analysis and proposed rule are finalized or until other regulations are put into place, the current regulations remain in effect.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: May 13, 2019.

Kelly L. Denit,

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

[FR Doc. 2019–10193 Filed 5–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Comment Request; Greater Atlantic Region Logbook Family of Forms.

OMB Control Number: 0648–0212.

Form Number(s): None.

Type of Request: Regular.

Number of Respondents: 2,422.

Average Hours per Response: VTR response time is 5 minutes; Shellfish log is 12.5 minutes; IVR burden for each tilefish call is 2 minutes, each herring call is 4 minutes, and each RSA or EFP call is 5 minutes; DAS IVRs are 5 minutes; and declarations of days out of gillnet fishery, along with the departure/landing call ins are 2 minutes.

Burden Hours: 10,429

Needs and Uses: The information collected using IVR and VTRs is used by several offices of the NOAA Fisheries Service, the U.S. Coast Guard, the Councils, and state fishery enforcement agencies under contract to the NOAA Fisheries Service in order to develop, implement, and monitor fishery management strategies.

These data serve as inputs for a variety of uses, including biological analyses and stock assessments, regulatory impact analyses, quota allocation selections and monitoring, economic profitability profiles, trade and import tariff decisions, allocation of grant funds among states, and analysis of ecological interactions among species. NMFS would be unable to fulfill the majority of its scientific research and fishery management missions without these data.

Affected Public: Business or other for-profit, Individuals or households.

Frequency: On occasion, weekly, monthly

Respondent's Obligation: Mandatory

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019-10163 Filed 5-15-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Input of Value and Use of NOAA Tropical Cyclone Graphical and Text Products in Decision-Making

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 15, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Sprague-Hildebrand, NOAA National Weather Service, 1325 East-West Highway, Silver Spring, MD 20910, 301-427-9065, and Jennifer.Sprague@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection. The NOAA National Weather Service (NWS) National Hurricane Center (NHC) produces tropical cyclone

text and graphical products to provide critical information about meteorological parameters of tropical storms and hurricanes that could threaten the United States and other countries. While NOAA has a good understanding of how many of its core partners (*i.e.*, emergency management personnel and broadcast meteorologists/members of the media) use these graphics, it is interested in how other professionals within key sectors (*i.e.*, transportation, marine, tourism, energy) and international users perceive these products and use them in decision-making. In particular, NOAA is interested in input on the NHC Track Forecast Cone (often referred to as the cone of uncertainty). In addition to appearing on NHC's website, the cone is widely disseminated on social media, online (*e.g.*, local and national news websites), and on television—with broadcast meteorologists and private weather industry often making their own version of the graphic. This request is for a set of related data collection activities, including interviews, focus groups, and a survey to collect information from audiences that use NHC products, particularly the Track Forecast Cone.

II. Method of Collection

NOAA will collect information by conducting a web-based survey within the four sectors of interest (transportation, marine, tourism, and energy) and interviews and/or focus groups with international users.

III. Data

OMB Control Number: 0648-XXXX.

Form Number(s): None.

Type of Review: Regulation (New information collection).

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government; International government.

Estimated Number of Respondents: 2,700 (2,660 for survey; 40 for interviews and/or focus groups).

Estimated Time per Response: 2,660 respondents × 30 minutes (survey); 40 respondents × 90 minutes (interviews and/or focus groups).

Estimated Total Annual Burden Hours: 1,370 hours.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019-10100 Filed 5-15-19; 8:45 am]

BILLING CODE 3510-KE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration Science Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the NOAA Science Advisory Board (SAB). The members will discuss issues outlined in the section on *Matters To Be Considered*.

DATES: The meeting will be held Tuesday, June 18, 2019 from 1:00 p.m. EDT to 4:00 p.m. EDT. These times and agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: <http://sab.noaa.gov/SABMeetings.aspx>.

ADDRESSES: This will be a webinar meeting. Members of the public may attend at the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), 1315 East-West Highway, SSMC3, Room 12836, Silver Spring, MD 20910. Members of the public may also participate virtually by registering at: <https://attendee.gotowebinar.com/register/53725036640687363>.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 301-734-1156; Email: Cynthia.Decker@noaa.gov; or visit the

SAB website at <http://sab.noaa.gov/SABMeetings.aspx>.

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters To Be Considered: The meeting will include the following topics: (1) NOAA Research and Development Plan; and (2) Sustainable Marine Aquaculture. Meeting materials, including work products will be made available on the SAB website: <http://sab.noaa.gov/SABMeetings.aspx>

Status: The meeting will be open to public participation with a 5-minute public comment period on June 18 from 3:50–3:55 p.m. EDT (check website to confirm time). The SAB expects that public statements presented at its meeting will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (1) minute. Written comments for the meeting should be received in the SAB Executive Director's Office by June 25, 2019 to provide sufficient time for SAB review. Written comments received after June 25 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12:00 p.m. on June 11, 2019, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Highway, Silver Spring, MD 20910; Email: Cynthia.Decker@noaa.gov

Dated: April 22, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–10109 Filed 5–15–19; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH035

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Mariana Archipelago Fishery Ecosystem Plan (FEP)-Guam Advisory Panel (AP) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Mariana Archipelago FEP-Guam AP will meet on Thursday, June 6, 2019, between 6 p.m. and 7:30 p.m. All times listed are local island times.

For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Mariana Archipelago FEP-Guam AP will meet at the Guam Division of Aquatics and Wildlife Resources Conference Room, 163 Dairy Road, Mangilao, Guam, 96913.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Mariana Archipelago FEP-Guam AP Meeting

Thursday, June 6, 2019, 6 p.m.–7:30 p.m.

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
 - A. U.S. Territory Longline Bigeye Catch/Allocation Limits
 - B. Annual SAFE Report Updates
4. Guam Reports
 - A. Community Report
 - B. Education Report
 - C. Island Report
 - D. Legislative Report
5. Report on Mariana Archipelago FEP Advisory Panel Plan
6. Island Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 13, 2019.

Rey Israel Marquez,

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

[FR Doc. 2019–10157 Filed 5–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH034

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Groundfish Electronic Monitoring Policy Advisory Committee and Technical Advisory Committee (Committees) will hold a webinar, which is open to the public.

DATES: The webinar will be held Wednesday, May 29, 2019, from 3 p.m. to 5 p.m., Pacific Daylight Time.

ADDRESSES: This meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar: (1) Join the GoToWebinar by visiting this link <https://www.gotomeeting.com/webinar> (Click "Join a Webinar" in top right corner of page), (2) Enter the Webinar ID: 665–172–195 and (3) enter your name and email address (required). After logging into the webinar, you must use your telephone for the audio portion of the meeting. Dial this TOLL number 1 (415) 655–0060, enter the Attendee phone audio access code 449–342–745, and enter your audio phone pin (shown after joining the webinar). System Requirements: for PC-based attendees: Required: Windows® 10, 8, 7, Vista, or XP; for Mac®-based attendees: Required: Mac OS® X 10.5 or newer; for Mobile attendees: Required: iPhone®, iPad®, Android™ phone or Android tablet (See <https://www.gotomeeting.com/webinar/>

ipad-iphone-android-webinar-apps). You may send an email to Mr. Kris Kleinschmidt or contact him at 503-820-2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Pacific Council; telephone: (503) 820-2424.

SUPPLEMENTARY INFORMATION: The primary purpose of this webinar is for the Committees to discuss materials and develop recommendations that will be presented at the June 2019 Pacific Council meeting in San Diego, CA. Specifically, NMFS staff will provide an overview of electronic monitoring policy and procedural directives that guide development of electronic technologies and reporting programs for Federally managed fisheries of the United States.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820-2411, at least 10 business days prior to the meeting date.

Dated: May 13, 2019.

Rey Israel Marquez,

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

[FR Doc. 2019-10158 Filed 5-15-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2019-HQ-0003]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, 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 June 17, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at aira_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: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Interment Expense; DD Forms 1375 and 2065; OMB Control Number 0704-0030.

Type of Request: Revision.

Number of Respondents: 2,450.

Responses per Respondent: 1.

Annual Responses: 2,450.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,225.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral/interment expenses. This information is required to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

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: May 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019-10135 Filed 5-15-19; 8:45 am]

BILLING CODE 5006-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Thursday, May 16, 2019 from 8:00 a.m. to 3:30 p.m.

ADDRESSES: The address of the closed meeting is the Nunn-Lugar Conference Room, 3E863 at the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571-0081 (Voice), (703) 697-1860 (Facsimile), kevin.a.doxey.civ@mail.mil (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140. Website: <http://www.acq.osd.mil/dsb/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102-3.150(a) concerning the meeting on May 16, 2019 of the Defense Science Board. 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.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C), Appendix), the

Government in the Sunshine Act (5 U.S.C. 552b), and Title 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet with DoD Leadership to discuss classified current and future national security challenges within the DoD.

Agenda: The DSB Spring Quarterly Meeting will begin on May 16, 2019 at 8:00 a.m. with opening remarks by Mr. Kevin Doxey, the Designated Federal Officer, and Dr. Craig Fields, DSB Chairman. The first presentation will be from Dr. John Manfredelli and Dr. Robert Wisnieff, Co-Chairs of the DSB Task Force on Applications of Quantum Technologies (Quantum Task Force), who will provide a classified brief on the Quantum Task Force's findings and recommendations and engage in discussion with the DSB. The DSB will then vote on the Quantum Task Force's findings and recommendations. Next, General John M. Murray, Commander of Army Futures Command, will provide a classified brief on his view of current and future defense challenges. Next, Ms. Amy McAuliffe, Chair of the National Intelligence Council, will provide a classified brief on her view of current and future defense challenges. Following lunch, Honorable Robert F. Behler, Director, Operational Test and Evaluation, will provide a classified brief on his view of current and future defense challenges. Next Dr. Lisa Porter, Deputy Under Secretary of Defense for Research and Engineering, will provide a classified brief on her view of the defense challenges and issues the DoD faces. The meeting will adjourn at 3:30 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it

cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: May 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–10161 Filed 5–15–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0079]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, 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 June 17, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, 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: Family Member Travel Screening; DD Form 3040, Screening Verification; DD Form 3040–1, Medical and Educational Information; DD Form 3040–2, Dental Health Information; DD Form 3040–3, Patient Care Review; DD Form 3040–4, Administrative Review Checklist; OMB Control Number 0704–0560.

Type of Request: Revision.

Number of Respondents: 267,032.

Responses per Respondent: 1.

Annual Responses: 267,032.

Average Burden per Response: 17.5 minutes.

Annual Burden Hours: 85,030.25.

Needs and Uses: The DD Forms 3040, 3040–1, 3040–2, 3040–3, and 3040–4 are used during the Family Member Travel Screening (FMTS) process when active duty Service members with Permanent Change of Station (PCS) orders request Command sponsorship for accompanied travel to remote or OCONUS installations. These forms document any special medical, dental, and/or educational needs of dependents accompanying the Service member to assist in determining the availability of care at a gaining installation.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Jasmeet Sehra.

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: May 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2019-10141 Filed 5-15-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold a meeting on Wednesday, June 5, 2019 from 8:55 a.m. to 3:35 p.m. The portion of the meeting from 8:55 a.m. to 2:00 p.m. will be closed to the public. The portion of the meeting from 2:15 p.m. to 3:35 p.m. will be open to the public.

ADDRESSES: The RFPB meeting address is the Pentagon, Room 3E863, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

Alexander Sabol, (703) 681-0577 (Voice), 703-681-0002 (Facsimile), *Alexander.J.Sabol.Civ@Mail.Mil* (Email). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Website: <http://rfpb.defense.gov/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a meeting from 8:55 a.m. to 3:35 p.m. The portion of the meeting from 8:55 a.m. to 2:00 p.m. will be closed to the public and will consist of remarks to the RFPB from the following invited speakers: The

Deputy Commander, U.S. Northern Command will discuss the Northern Command's posture with the use of the National Guard and Reserve to achieve its national military strategy and homeland security requirements; the Principal Deputy Director, Office of the Secretary of Defense for Cost Assessment and Program Evaluation will discuss the Department's analysis on how effectively the Services are programming the requirements of their Reserve Components to achieve the objectives of National Military Strategy; the Under Secretary of Defense for Comptroller/Chief Financial Officer, Performing the Duties of Deputy Secretary of Defense will discuss the Active and Reserve Components' readiness initiatives, their equipment parity and transparency reporting, and the Department's approach to budgeting Reserve equipment in the Defense Budget; the Assistant Secretary of Defense for Manpower and Reserve Affairs, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness will provide an update of his goals on Reserve Component personnel system reforms under consideration and review of the Assistant Secretary of Defense Reserve Affairs reorganization issues; and the Institute for Defense Analyses Corporation will brief the findings of its study on the Reserve Components' training and readiness distractors during Operation Enduring Freedom. The portion of the meeting from 2:15 p.m. to 3:35 p.m. will be open to the public and will consist of briefings from the following: The Subcommittee on Enhancing DoD's Role in the Homeland will provide a brief on the Reserve Components' Cyber training qualification requirements and review them for a proposed RFPB recommendation to the Secretary of Defense; the Subcommittee on Supporting and Sustaining Reserve Component Personnel will discuss the subcommittee's review of the MILTECH retention issues and the Department of Health Affairs reform proposals impacting the Reserve Components for proposed recommendation to the Secretary of Defense; and the Subcommittee on Ensuring a Ready, Capable, Available, and Sustainable Operational Reserve will provide a review of the Reserve Components' equipment management process, their medical force structure issues, and their cost analysis findings for proposed RFPB recommendation to the Secretary of Defense.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR

102-3.140 through 102-3.165, and subject to the availability of space, the meeting is open to the public from 2:15 p.m. to 3:35 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Tuesday, June 4, 2019, as listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance at 1:45 p.m. to provide sufficient time to complete security screening to attend the beginning of the open meeting at 2:15 p.m. on June 5. To complete the security screening, please be prepared to present two forms of identification. One must be a picture identification card.

In accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c), and 41 CFR 102-3.155, the DoD has determined that the portion of this meeting scheduled to occur from 8:55 a.m. to 2:00 p.m. will be closed to the public. Specifically, the Assistant Secretary of Defense for Manpower and Reserve Affairs, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness, in coordination with the Department of Defense FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1). Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.105(j) and 102-3.140, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates in accordance with the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection,

including, but not limited to, being posted on the RFPB's website.

Dated: May 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-10152 Filed 5-15-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2019-ICCD-0066]

Agency Information Collection Activities; Comment Request; Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 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-0066. 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 www.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 Freddie Cross, 202-453-7224.

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: Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation.

OMB Control Number: 1840-0744.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Federal Government; State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,794.

Total Estimated Number of Annual Burden Hours: 267,588.

Abstract: This request is to approve a revision of the state report card and re-approval institution and program report cards required by the Higher Education Act of 1965, as amended in 2008 by the Higher Education Opportunity Act (HEOA). States must report annually on criteria and assessments required for initial teacher credentials using a State Report Card (SRC), and institutions of higher education (IHEs) with teacher preparation programs (TPP), and TPPs outside of IHEs, must report on key program elements on an Institution and Program Report Card (IPRC). IHEs and TPPs outside of IHEs report annually to their states on program elements, including program numbers, type, enrollment figures, demographics, completion rates, goals and assurances to the state. States, in turn, must report on TPP elements to the Secretary of

Education in addition to information on assessment pass rates, state standards, initial credential types and requirements, numbers of credentials issued, TPP classification as at-risk or low-performing. The information from states, institutions, and programs is published annually in The Secretary's Report to Congress on Teacher Quality.

Dated: May 10, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019-10104 Filed 5-15-19; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2019-0185; FRL-9993-03]

Pesticides; Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides; Notice of Availability and Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is seeking comment on a draft revised method for conducting national level threatened and endangered (listed) species biological evaluations (BEs) for pesticides. EPA is also announcing a public meeting on June 10, 2019, where EPA will present the draft revised method and provide an additional opportunity for the public to provide feedback.

DATES: *Meeting:* The public meeting will be held from 9:00 a.m. to 12:00 noon, Eastern Standard Time, on June 10, 2019, and you must register to participate in the meeting using the instructions in Unit III. on or before May 30, 2019.

Accommodations requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Comments: Comments must be received on or before July 1, 2019.

ADDRESSES: *Meeting:* The meeting will be held in the Lobby-level Conference Center of EPA's Potomac Yard South Bldg. (One Potomac Yard), 2777 South Crystal Drive, Arlington, VA 22202-4501. EPA's Potomac Yard South Bldg. is approximately 1 mile from the Crystal

City Metro Station. Register to participate in the meeting using the instructions in Unit III.

Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0185, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

FOR FURTHER INFORMATION CONTACT:

Tracy Perry, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–0128; email address: perry.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and/or the potential impacts of pesticide use on listed species and designated critical habitat. Given the broad interest, the Agency has not attempted to identify or describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that

is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

C. How can I get copies of this document and other related information?

A copy of the EPA Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides is available in the docket. The docket, identified by docket ID number EPA–HQ–OPP–2019–0185, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. What action is the agency taking?

A. Authority

The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, requires federal agencies, such as EPA, to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, constitutes an EPA “action” under the ESA. If EPA determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively referred to as the Services), as appropriate. EPA initiates formal consultation with the Services through the conduct and transmittal of

a biological evaluation (BE) with its findings.

B. Background

On January 18, 2017, EPA released its first nationwide BEs for pesticides conducted using a pilot interagency method developed by EPA and the Services, with collaboration from the U.S. Department of Agriculture (USDA). The pilot method was developed following the recommendations of the April 2013 National Academy of Sciences’ (NAS) report, *Assessing Risks to Endangered and Threatened Species from Pesticides*. When developing the pilot process, EPA and the Services intended to revisit and refine the method to address limitations identified through evaluation of the pilot chemicals (*i.e.*, chlorpyrifos, diazinon and malathion). A full description of the pilot method and the NAS report recommendations are available at: <https://www.epa.gov/endangered-species/implementing-nas-report-recommendations-ecological-risk-assessment-endangered-and>.

EPA believes that the pilot method had the following major limitations: (1) The method did not meaningfully distinguish species that are likely to be exposed to and affected by the assessed pesticides from those that are not likely; (2) The level of effort was too high for EPA to sustain for all pesticides; and (3) The amount of documentation produced was too great for the public to review and comment upon in a reasonable timeframe. Consistent with the pilot process, EPA has developed and is proposing a revised method for the nationwide evaluation of pesticide risks to listed species that is based on the experience gained through the pilot BEs and on information received in public comments on the draft pilot BEs and through several stakeholder meetings. EPA’s draft revised method, which continues to follow NAS’s recommendations, is designed to be: (1) Efficient, relying upon automation as much as possible; (2) Protective without being overly conservative; (3) Transparent; and (4) Scientifically defensible, relying on the best available data.

C. Summary of Major Aspects of Draft Revised Method

The following is a summary of the major aspects for which the EPA is seeking comment on the draft revised method for assessing risk to listed species.

First, to more accurately represent where and to what extent a pesticide is likely to be applied, EPA is proposing an approach for incorporating pesticide-

specific usage data into the listed species consultation process. The pilot BEs relied on use assumptions from pesticide product labels to represent where the pilot chemicals were likely to be applied (e.g., applied to all labelled crops at maximum application rates simultaneously). The revised method proposes to incorporate usage data (e.g., survey data, including actual application rates) in the determination of where a pesticide is likely to be applied.

Second, based on the accuracy of the spatial data utilized and the conservative assumptions related to the action area and potential drift, EPA is interpreting a <1% overlap of listed species' ranges with potential use sites as unreliable and not representative of real exposure potential.

Third, EPA's revised method proposes the use of probabilistic methods to determine the likelihood of a species to be adversely affected by a pesticide. The goal of the probabilistic analysis is to more fully capture and characterize the variability in the range of potential exposures and toxicological effects to listed species and to better inform the biological opinion.

The fourth major area of revision is to apply a weight-of-evidence framework to distinguish those listed species that are likely to be adversely affected (LAA) from those that are not likely to be adversely affected (NLAA), based on criteria (e.g., dietary preferences, migration patterns, extent of range potentially exposed) associated with the likelihood that an individual will be exposed and affected.

D. Public Comments Sought

EPA is seeking comment on the draft revised method for assessing risk to listed species, and is specifically interested in comments regarding the degree to which the following aspects of its draft revised method are reasonable and represent advances in the pilot methodologies for assessing risk to listed species: (1) The proposed methodology for incorporating usage data in Steps 1 and 2 of the BE; (2) The proposed interpretation that a <1% overlap of listed species' ranges with potential use sites is unreliable, based on the accuracy of the underlying data, and does not represent real-world exposure; (3) The proposed approach for introducing components of probabilistic analyses into the BE; and (4) The proposed weight-of-evidence framework.

III. Public Meeting

EPA will host a public meeting, along with representatives from the Services

and USDA, to present the draft revised method and to provide an additional opportunity for the public to provide feedback. This meeting is an opportunity for stakeholders and agencies to continue their dialogue on the technical aspects of implementing the NAS recommendations, building on public meetings held in November 2013, April and October 2014, April 2015, and June 2016, and furthers the agencies' goal of developing a sustainable methodology and process for assessing pesticide impacts on listed species that is efficient, inclusive, and transparent.

Date: The meeting will be held on Monday, June 10, 2019 from 9:00 a.m. to 12:00 noon, E.S.T. Additional meeting details, including an agenda, teleconference and webinar information, will be available shortly in the docket.

Accommodations requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting to give EPA as much time as possible to accommodate your request.

Requests to participate: You must register by Thursday, May 30, 2019 to attend either in person or via teleconference/webinar. Public comments may be made during the oral comment session of the meeting. Requests to participate in the meeting and to make oral comments must be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 10, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2019-10177 Filed 5-15-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities; Revision of Currently Approved Collection

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Maritime Commission (FMC or Commission) invites comments on a revision to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to collect information for requests for

dispute resolution services submitted to its Office of Consumer Affairs and Dispute Resolution Services (CADRS).

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may send comments by the following methods. Please reference the information collection's title and OMB number in your comments.

- **Email:** omd@fmc.gov. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

- **Mail:** Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the data collection plans and draft instruments, email omd@fmc.gov or call Donna Lee at (202) 523-5800. When submitting comments or requesting information, please include the title of the information collection for reference. Comments submitted in response to this Notice will be included or summarized in the ICR to OMB. All comments are part of the public record and subject to disclosure.

SUPPLEMENTARY INFORMATION:

Title: Request for Dispute Resolution Service—Cruise.

OMB Control Number: 3072-0072.

Type of Review: Information Collection Revision.

Frequency of Response: On occasion.

Respondents/Affected Public:

Companies or individuals seeking ombuds or mediation assistance from the Federal Maritime Commission's Office of Consumer Affairs and Dispute Resolution Services.

Estimated Total Number of Potential Annual Responses: 500.

Estimated Total Number of Responses From Each Respondent: 1.

Estimated Total Annual Burden Hours per Response: 20 minutes.

Total Estimated Number of Annual Burden Hours: 167.

Abstract: This is a revision to the currently-approved FMC Form-32 (Request for Dispute Resolution Service—Cruise). When requested by the public and the regulated industry, the FMC, through CADRS, provides ombuds and mediation services to assist parties in resolving passenger vessel (cruise) disputes without resorting to litigation or administrative adjudication. These functions focus on addressing issues that members of the regulated industry and the public may encounter

at any stage of a commercial or customer dispute. In order to provide its ombuds and mediation services, CADRS needs certain identifying information about the involved parties and nature of the dispute. In response to requests for assistance from the public, CADRS requests this information from parties seeking its assistance. The collection and use of this information on a cruise dispute is integral to CADRS staff's ability to efficiently review the matter and provide assistance. Aggregated information may be used for statistical purposes. http://www.fmc.gov/resources/requesting_cadrs_assistance.aspx.

The proposed revision to Form FMC-32 would add a request for booking or ticket contract number and would remove a request to indicate whether the cruise departed from a U.S. port.

As required by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 571 *et seq.*, the information contained in these forms is treated as confidential and subject to the same confidentiality provisions as administrative dispute resolutions pursuant to 5 U.S.C. 574. Except as specifically set forth in 5 U.S.C. 574, neither CADRS staff nor the parties to a dispute resolution shall disclose any informal dispute resolution communication.

This information collection is subject to the PRA. The FMC may not conduct or sponsor a collection of information, and the public is not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Request for Comments: The FMC solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics: (1) Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility; (2) whether the estimated burden of the proposed collection of information is accurate; (3) whether the quality, utility, and clarity of the information to be collected could be enhanced; and (4) whether the burden imposed by the collection of information could be minimized by use

of automated, electronic, or other forms of information technology.

The FMC 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 pursuant to 5 CFR 1320.10. FMC will issue another **Federal Register** announcement pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 46 U.S.C. 44101 *et seq.*

Rachel Dickon,
Secretary.

[FR Doc. 2019-10145 Filed 5-15-19; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL MARITIME COMMISSION

[Docket No. 19-03]

Muhammad Rana, Complainant v. Michelle Franklin, d.b.a. "The Right Move Inc.", Respondent; Notice of Filing of Complaint and Assignment

Served: May 13, 2019.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Muhammad J. Rana, hereinafter "Complainant", against Michelle Franklin, d.b.a. "The Right Move Inc.", hereinafter "Respondent". Complainant states that he ". . . is a U.S. citizen who was temporarily relocating his residence from Alexandria, Virginia to Islamabad, Pakistan." Complainant states that Respondent ". . . is an individual ocean shipping/freight forwarder doing business as 'The Right Move, Inc.'" with FMC Registration #023229N.

Complainant states that "On February 6, 2019, [he] and the [R]espondent entered into an agreement through electronic mail where the [C]omplainant retained the services of the [R]espondent." Complainant alleges that the Respondent agreed to ". . . arrange for the pick-up of [C]omplainant's household goods of personal effect in a 20-foot container and ship/deliver it to the Port Qasim, Karachi, Pakistan for pick up by the [C]omplainant." Complainant alleges that he could not receive his container ". . . because ocean freight/shipping charges had not been paid by the [R]espondent." Complainant alleges that Respondent's failure to pay ocean freight charges and uncooperativeness in providing proof such charges were

paid ". . . constitute an unreasonable practice related to the delivery of property in violation of 46 U.S.C. 41102(c) [formerly § 10(d)(1) of the Shipping Act]."

Complainant requests that the Commission: award \$4,509.40 in compensatory damages, over \$77,000 in other damages; revoke the Respondent's FMC license; and "issue further order(s) as the Commission determines to be proper"; and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/19-03/>.

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by May 13, 2020, and the final decision of the Commission shall be issued by November 30, 2020.

Rachel Dickon,
Secretary.

[FR Doc. 2019-10151 Filed 5-15-19; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

[Docket No. OP-1664]

Potential Modifications to the Federal Reserve Banks' National Settlement Service and Fedwire® Funds Service To Support Enhancements to the Same-Day ACH Service and Corresponding Changes to the Federal Reserve Policy on Payment System Risk, Request for Comments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for public comment.

SUMMARY: The Board of Governors (Board) is requesting comment on potential modifications to the Federal Reserve Banks' (Reserve Banks) payment services to facilitate adoption of a later same-day automated clearinghouse (ACH) processing and settlement window. Specifically, the Reserve Banks would extend the daily operating hours of the National Settlement Service (NSS) to allow the private-sector ACH operator to settle its in-network transactions resulting from the later same-day ACH window. To support these new NSS operating hours, the Reserve Banks would extend the daily operating hours of the Fedwire® Funds Service, creating implications for extension policies for contingencies that might result in more frequent delays to the reopening of the Fedwire® Funds Service. Finally, the Board is requesting

comment on corresponding changes to the Federal Reserve Policy on Payment System Risk related to a new posting time and an increase to the daylight overdraft fee rate.

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. OP-1664, 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 docket 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/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, 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 FURTHER INFORMATION CONTACT:

Michael Ballard, Senior Financial Institution and Policy Analyst (202-452-2384); Mark Magro, Manager (202-452-3944), Division of Reserve Bank Operations and Payment Systems; or Evan H. Winerman, Senior Counsel (202-872-7578), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202-263-4869).

SUPPLEMENTARY INFORMATION:

I. Background

The ACH network serves as a ubiquitous, nationwide mechanism for processing batch-based credit and debit transfers electronically. Currently, the ACH network includes two network operators: The Reserve Banks, through FedACH®, and The Clearing House (TCH), through the Electronic Payments Network (EPN). The ACH network is governed by the rules of the ACH operators, which generally incorporate the NACHA Operating Rules and Guidelines adopted by NACHA's

members.¹ In the ACH network, originating depository financial institutions (ODFIs) are defined as those entities that originate ACH transactions while receiving depository financial institutions (RDFIs) receive ACH transactions.

Currently, there are three ACH processing and settlement windows: One that allows for the processing and settlement of ACH transactions the next business day and two that allow for the processing and settlement of ACH transactions on the same business day. In 2015, NACHA members approved amendments to the Operating Rules and Guidelines that required all RDFIs to accept same-day ACH payments, with ODFIs paying an interbank fee to RDFIs for each same-day ACH forward transaction.² Beginning in 2016, the ACH operators adopted two same-day ACH windows: (1) A morning window with a submission deadline at 10:30 a.m. ET and settlement at 1:00 p.m. ET and (2) an afternoon window with a submission deadline at 2:45 p.m. ET and settlement at 5:00 p.m. ET. During each window, the ACH operators process the transactions received by the submission deadline and either distribute the transactions to RDFIs that are their direct customers or exchange with each other the ACH transactions that are destined to RDFIs that are customers of the other operator. The Reserve Banks settle all ACH transactions that are originated or received by FedACH® customers, including transactions that are exchanged between the two operators. TCH arranges settlement for only those ACH transactions that are originated

and received by TCH customers (that is, in-network transactions). The Reserve Banks settle ACH transactions by posting credits and debits to the sending and receiving banks' Federal Reserve accounts at the settlement time and date provided in the FedACH® processing schedule. TCH uses NSS to settle its in-network ACH transactions in participants' Federal Reserve accounts, typically sending NSS files at the same times the Reserve Banks settle FedACH® transactions.

In December 2017, NACHA proposed a third same-day ACH window that would allow an ODFI to submit same-day ACH transactions later in the day. Specifically, NACHA proposed an afternoon submission deadline of 4:45 p.m. ET with settlement at 6:00 p.m. ET.³ NACHA's proposal was intended to allow originators, ODFIs, and other participants to use the same-day ACH service during a greater portion of their business hours.⁴ The current deadline for the afternoon window is early in the business day for ODFIs outside the eastern time zone, reducing the ability of those financial institutions, originators, and end users to take full advantage of existing same-day ACH services. To meet the operators' processing deadlines, ODFIs may need to impose even earlier deadlines for their originators (for example, merchants), particularly if such ODFIs rely on correspondent institutions to process their ACH transactions.

NACHA's membership approved the proposal on September 13, 2018.⁵ The amended operating rules, however, are contingent on changes to Reserve Bank services necessary to enable the third same-day ACH window.⁶ These changes are discussed in further detail below.

While the proposals discussed in this notice fall under the general topic of enhancing existing services, the Board is not at this time directly addressing the comments received in response to its October 2018 request for public comment on potential actions the Federal Reserve could take to support faster (real-time) payments in the United States. Those potential actions included development of (1) a service for 24x7x365 real-time interbank settlement of faster payments and (2) a liquidity management tool that would enable transfers between Reserve Bank

¹ NACHA's membership consists of insured depository financial institutions and regional payment associations. As an ACH operator, the Reserve Banks, through Operating Circular 4, generally incorporate NACHA's Operating Rules and Guidelines as rules that govern clearing and settlement of commercial ACH transactions (*i.e.*, non-government ACH transactions) by the Reserve Banks. The Reserve Banks, as fiscal agents of the United States, also handle ACH transactions for which an agency of the Federal Government is the sending bank or the receiving bank under Treasury Department regulations (including 31 CFR parts 210, 203, and 370) and Treasury procedures.

² The Reserve Banks started offering an optional FedACH® SameDay Service to Reserve Bank ACH customers in 2010, but it experienced limited adoption because participation was voluntary, with few RDFIs signing up to accept same-day ACH payments. These amendments were approved by NACHA's voting members in 2015 and became effective in three phases, beginning with same-day ACH credits in September 2016, same-day ACH debits in 2017, and faster funds availability in March 2018. The Board requested comment on enhancements to align FedACH® services with the amendments in May 2015 and approved the enhancements in September 2015. See 80 FR 30246, 30248 (May 27, 2015) and 80 FR 58248, 58253 (Sep. 28, 2015).

³ As noted in NACHA's proposal, schedules and timing will be determined by each ACH operator and are not set by the amended operating rules.

⁴ See <https://www.nacha.org/rules/expanding-same-day-ach>.

⁵ See <https://www.nacha.org/news/same-day-ach-will-be-enhanced-meet-ach-end-user-needs>.

⁶ See *n.4*, *supra*.

accounts on a 24x7x365 basis.⁷ The Board continues to evaluate, and will separately respond to, comments on the 2018 notice. The notice issued today is narrowly focused on whether the Reserve Banks should modify the operating hours for their wholesale services to support a third same-day ACH processing and settlement window.

II. Potential Modifications to Reserve Bank Payment Services

The Board is seeking comment on potential modifications to the operating hours of NSS and the Fedwire Funds Service to facilitate adoption of a later same-day ACH processing and settlement window with an afternoon submission deadline of 4:45 p.m. ET and settlement at 6:00 p.m. ET.

Specifically, the current closing time of NSS is 5:30 p.m. ET, 30 minutes earlier than NACHA's proposed 6:00 p.m. ET settlement time for the third same-day ACH window. In order to accommodate this later same-day ACH window, the Reserve Banks would extend the closing of NSS one hour, from 5:30 p.m. ET to 6:30 p.m. ET. This proposed change to NSS operating hours would allow TCH to settle in-network same-day ACH transactions submitted during the third same-day ACH window. The Federal Reserve has previously undertaken similar operating-hour extensions to support private-sector payment systems.⁸

The proposal to extend NSS operating hours would also require the Reserve Banks to (1) extend the closing of the Fedwire Funds Service by 30 minutes, from 6:30 p.m. ET to 7:00 p.m. ET, and

(2) extend the cutoff time for Reserve Bank accountholders to initiate transfers on behalf of third parties via the Fedwire Funds Service (Fedwire Funds third-party cutoff) by 45 minutes, from 6:00 p.m. ET to 6:45 p.m. ET.⁹ This change would reduce the time between the Fedwire Funds third-party cutoff and the closing of the Fedwire Funds Service by 15 minutes. Collectively, these proposed changes are intended to allow sufficient time between the closing of NSS, the Fedwire Funds third-party cutoff, and the closing of the Fedwire Funds Service, in order for depository institutions and their customers to reposition balances and manage liquidity. Table 1 summarizes the current and proposed closings and cutoffs for Reserve Bank services, while table 2 illustrates the changes in times between service closings and cutoffs.

TABLE 1

	Current closings/cutoffs	Proposed closings/cutoffs
<i>NSS closing</i>	5:30 p.m. ET	6:30 p.m. ET.
<i>Fedwire Funds third-party cutoff</i>	6:00 p.m. ET	6:45 p.m. ET.
<i>Fedwire Funds Service closing</i>	6:30 p.m. ET	7:00 p.m. ET.

TABLE 2

	Current time between closings/cutoffs (minutes)	Proposed time between closings/cutoffs (minutes)
<i>Time between closing of NSS and Fedwire Funds third-party cutoff</i>	30	15
<i>Time between Fedwire Funds third-party cutoff and closing of Fedwire Funds Service</i>	30	15
<i>Time between closing of NSS and Fedwire Funds Service</i>	60	30

III. Discussion and Request for Comment

The potential modifications to operating hours for NSS and the Fedwire Funds Service are each considered major service enhancements. Any potential new payment service or major enhancements to an existing service must meet the following criteria: The Federal Reserve must expect to achieve full recovery of costs over the

long run; the Federal Reserve must expect that its providing the service will yield a clear public benefit; and the service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.¹⁰

The Board expects that, over the long run, the Reserve Banks would be able to recover the costs associated with the proposed extended operating hours. The proposed operating hours for NSS and

the Fedwire Funds Service would require minor technical changes and additional staffing during the extended business day, resulting in minimal one-time implementation costs and ongoing additional staffing costs. The Reserve Banks anticipate recovering these costs through existing fees charged for NSS and the Fedwire Funds Service.

The Board also expects that extending operating hours for NSS and the Fedwire Funds Service to support a

⁷ 83 FR 57351, 57364 (Nov. 15, 2018).

⁸ Specifically, the Reserve Banks extended NSS operating hours in 2015 from 5:00 p.m. ET to 5:30 p.m. ET so that operators of private-sector check-clearing systems could settle transactions at the same time the Reserve Banks post commercial check transactions. The Board had amended Part II of the PSR policy to establish a new 5:30 p.m. ET posting time for commercial check transactions settled through the Reserve Banks. See 79 FR 72112, 72116 (Dec. 5, 2014) (noting that "[t]he establishment of posting rules outside of the NSS operating day could potentially create competitive disparities between Reserve Bank and private-sector clearing and settlement systems").

⁹ The Federal Reserve has long provided at least 30 minutes between the last NSS settlement and the closing of the Fedwire Funds Service, recognizing that "the Fedwire funds transfer service is the primary alternative for orderly and efficient settlement of bilateral obligations in case a settlement arrangement is unable to complete its multilateral settlement through NSS." See 63 FR 60000, 60004 (Nov. 6, 1998). Further, NSS settlement entries may result in changes to depository institutions' master account positions, necessitating the use of the Fedwire Funds Service to send or receive funds to close the day at the position they intend. The Fedwire Funds third-party cutoff was established to stop the flow of customer transactions and allow financial

institutions a settlement period to conduct bank-to-bank transfers to adjust master account positions before the closing of the Fedwire Funds Service. The current Fedwire Funds third-party cutoff of 6:00 p.m. ET was established in 1990. See 55 FR 18755, 18758 (May 4, 1990).

¹⁰ Clear public benefits include promoting the integrity of the payment system, improving the effectiveness of financial markets, reducing the risk associated with payment and securities-transfer services, or improving the efficiency of the payment system. Board of Governors of the Federal Reserve System, "Federal Reserve in the Payment System," Issued 1984; revised 1990. Available at http://www.federalreserve.gov/paymentsystems/pfs_frpayss.htm.

third same-day ACH window would offer public benefits. Same-day ACH transactions are used for payroll (especially emergency payroll), business-to-business payments, consumer bill payments, and consumer account-to-account payments. By allowing ODFIs to submit same-day ACH transactions later in the business day, the third same-day ACH window could encourage more ODFIs (particularly those in the Pacific and mountain time zones) to offer same-day ACH to their customers, potentially increasing usage more broadly and resulting in increased adoption of same-day ACH payments. This in turn would further advance the Federal Reserve's ongoing objective to improve the safety and efficiency of payment systems in the United States. The Board recognizes, however, that the proposal may increase certain risks and costs for Reserve Bank acountholders and their customers, including risks and costs related to compression of end-of-day processing activities, decreased availability of extensions to operating hours, and more-frequent delays to the reopening of the Fedwire Funds Service. As discussed further below, the Board requests comment on these potential risks and costs.

Finally, the Board does not expect that other providers alone could provide the enhanced services with reasonable effectiveness, scope, and equity. TCH relies on NSS to settle its in-network ACH transactions, including same-day ACH transactions, and so would be unable to offer a third same-day ACH window with settlement at 6:00 p.m. ET unless the Reserve Banks extend the closing time of NSS.

The Board's *Principles for the Pricing of Reserve Bank Services* further require that the Board seek public comment on changes to Reserve Bank services that would have significant longer-run effects on the nation's payment system.¹¹ The Board believes that extending the operating hours of NSS and the Fedwire Funds Service could have such an effect. Accordingly, the Board requests comment on all aspects of these potential changes, including the Board's analysis of the potential public benefits as well as the potential options to mitigate the risk of more-frequent delays to the reopening of the Fedwire Funds Service.

The Board requests public comment on the following questions:

1. *How might institutions and their customers use a later same-day ACH window?*

2. *Would institutions and their customers use expanded hours of NSS and the Fedwire Funds Service for purposes unrelated to the later same-day ACH window? If so, how?*

A. Risk Considerations

1. End-of-Day Compression

The Federal Reserve has long provided at least thirty minutes between the last NSS settlement and the closing of the Fedwire Funds Service.¹² Depository institutions and their customers use the time between the closing of NSS and the closing of the Fedwire Funds Service to reposition balances and manage liquidity.¹³

In order to accommodate a third same-day ACH settlement window, the Reserve Banks' current windows between service closings and cutoffs would, as outlined in tables 1 and 2, be reduced 50 percent. These reduced windows would limit the time available for depository institutions and their customers to reposition balances and manage liquidity after the processing and settlement of an NSS file or third-party-initiated Fedwire Funds transactions. As a result, the Board believes that depository institutions and their customers may need to make technical, operational, and/or procedural changes to adjust to the proposed end-of-day timeline. If depository institutions do not make such changes, the Board believes that Reserve Banks may experience increases in requests to extend the closing of the Fedwire Funds service, in requests for discount window loans, or in overnight overdrafts.

Additionally, any extension to the closing of NSS or the Fedwire Funds third-party cutoff would require an extension to the closing of the Fedwire Funds Service to maintain at least fifteen minutes between each deadline.¹⁴ If the Reserve Banks do not pursue certain risk-mitigation options described below, any extension granted to NSS or the Fedwire Funds third-party cut-off would result in a delayed reopening of the Fedwire Funds Service on the next business day. Issues related to extensions and the delayed reopening

of the Fedwire Funds Service are discussed further in the next section.

The Board requests public comment on the following questions:

3. *What increased risks and costs might your institution and customers incur as a result of reduced time between the closing of NSS, the Fedwire Funds third-party cutoff, and the closing of the Fedwire Funds Service as outlined in Tables 1 and 2?*

4. *What changes to internal processes or technologies (if any) would your institution need to make to adjust to any of the reduced windows outlined in Tables 1 and 2? Approximately how long would it take for your institution to implement any necessary changes?*

2. Delayed Reopening of the Fedwire Funds Service

The Fedwire Funds Service operating hours currently begin at 9:00 p.m. ET on the preceding calendar day and end at 6:30 p.m. ET, Monday through Friday. The Reserve Banks allow participants to request extensions to the Fedwire Funds third-party cutoff or the Fedwire Funds Service closing time if, among other things, the dollar value of delayed transfers would exceed \$1 billion.¹⁵ Such extensions occur approximately twice per month and range from 15 minutes to 1 hour and 45 minutes, with most lasting 30 minutes.¹⁶ In most cases, extensions to the Fedwire Funds third-party cutoff or the Fedwire Funds Service closing time do not affect the reopening time of the Fedwire Funds Service for the next business day.

The Reserve Banks strive to maintain at least a 2-hour window between the closing and reopening of the Fedwire Funds Service to allow Fedwire participants sufficient time to complete their end-of-day cycles and processing.¹⁷ As discussed above, to

¹⁵ See Operating Circular 6, paragraph 10.3, and <https://www.frb-services.org/resources/financial-services/wires/extension-guidelines.html>. Additionally, if the Fedwire Funds Service experiences an operational disruption, the Reserve Banks may extend the Fedwire Funds Service closing time regardless of the dollar value still to be sent.

¹⁶ Over a 30-month period between January 2016 and July 2018, the Reserve Banks granted 38 extensions to the Fedwire Funds third-party cut-off and 32 extensions to the closing of the Fedwire Funds Service (20 of which were prompted by extensions to the Fedwire Funds third-party cut-off), ultimately resulting in three delays to the reopening of the Fedwire Funds Service.

¹⁷ See <https://www.frb-services.org/resources/financial-services/wires/extension-guidelines.htm>. See also 68 FR 28826, 28827 (May 27, 2003) ("In general, the Federal Reserve Banks will work to maintain a two-hour interim period between the close and open of Fedwire each business day"). End-of-day cycles and processing typically involve the reconciliation and preparation of systems for the next cycle date as well as the production of customer statements.

¹¹ Board of Governors of the Federal Reserve System, "Principles for the Pricing of Federal Reserve Bank Services," Issued 1980.

¹² See n.9, *supra*.

¹³ For example, if a large debit from an NSS file creates an overdraft in a depository institution's account, that institution may reposition balances so that it does not have a negative account balance at the closing of the Fedwire Funds Service.

¹⁴ Operating Circular 12, paragraph 5.8, provides discretion to a Reserve Bank to extend the NSS settlement window.

facilitate a third same-day ACH window, the Reserve Banks would change the closing time of the Fedwire Funds Service from 6:30 p.m. ET to 7:00 p.m. ET, which would reduce the window between the closing and reopening of the Fedwire Funds Service from 2 hours and 30 minutes to 2 hours. Accordingly, if the Reserve Banks maintain their current practice of providing a 2-hour window between the closing and reopening of the Fedwire Funds Service, all extensions granted to the closing of the Fedwire Funds Service would result in a delayed reopening of the Fedwire Funds Service for the next business day.¹⁸ Such delays would likely occur routinely as the Reserve Banks currently extend the Fedwire Funds third-party cutoff or the closing of the Fedwire Funds Service approximately twice per month. These delays could affect Fedwire Funds Service participants that wish to send payment orders at the start of the Fedwire Funds Service business day. On average, \$35 billion is settled over the Fedwire Funds Service during the first hour of the Fedwire Funds Service business day (9:00 p.m. ET to 10:00 p.m. ET), with a majority of transactions supporting the international markets and a portion of the amount funding settlement in other U.S. payment systems.

Additionally, if the Reserve Banks change the closing of NSS to 6:30 p.m. ET and maintain their current practice of providing a two-hour window between the closing and reopening of the Fedwire Funds Service, any extension to the closing of NSS would result in a delayed reopening of the Fedwire Funds Service.¹⁹ While extensions to the closing of NSS are uncommon, such extensions could be required when system outages or problems prevent the submission or processing of NSS files.²⁰ Similarly, if

the Reserve Banks change the Fedwire Funds third-party cutoff to 6:45 p.m. ET as proposed, any extension to this cutoff would result in a delayed reopening of the Fedwire Funds Service.²¹

Today, delays to the reopening of the Fedwire Funds Service occur approximately once per year.²² Based on recent data, if the Reserve Banks extend the closing of the Fedwire Funds Service to 7:00 p.m. ET, delays to the reopening of the service could occur approximately twice per month. The Federal Reserve continues to believe that it is important to minimize the frequency of Fedwire Funds Service extensions, especially those that result in delayed reopenings to the service. Accordingly, if the Reserve Banks implement the proposed changes to the closing and cutoff times for NSS and the Fedwire Funds Service, the Reserve Banks may need to be more restrictive in granting service extensions.

The Reserve Banks could make certain operational and policy changes to reduce the risk of frequent delays to the reopening of the Fedwire Funds Service. One option is to change the Reserve Banks' guidelines for providing extensions to the Fedwire Funds Service (which have been in effect since 1997) by increasing the current \$1 billion value threshold. If the Reserve Banks were to raise the extension threshold to \$5 billion, for example, it is estimated that, based on recent data, the Reserve Banks would grant approximately half the current number of extensions to the Fedwire Funds third-party cutoff or the closing of the Fedwire Funds Service. A \$5 billion value threshold may also be more appropriate based on the average daily value of transactions settled over the Fedwire Funds Service.²³ Even with a \$5 billion value threshold, however, every extension to the proposed closing of NSS, the Fedwire Funds third-party cutoff, or the closing of the Fedwire Funds Service would still result in the delayed reopening of the Fedwire Funds Service for the next business day. An analysis of recent data indicates that such extensions and delayed reopenings

could occur approximately once a month.

A second option would be for Reserve Banks to change the practice of maintaining a 2-hour window between the closing of the Fedwire Funds Service (for one funds-transfer business day) and the reopening of the Fedwire Funds Service (for the next funds-transfer business day). For example, if the Reserve Banks were to maintain a 90-minute window rather than a 2-hour window, the Reserve Banks could extend the closing of the Fedwire Funds Service by 30 minutes without delaying the reopening of the Fedwire Funds Service. This change would reduce the frequency of delays to the reopening of the Fedwire Funds Service, although an analysis of recent data indicates that such delays would still occur more frequently than they do today, resulting in approximately five delays to the reopening of the Fedwire Funds Service per year.²⁴

A third option would be for the Reserve Banks to implement a \$5 billion threshold for extensions *and* reduce the two-hour window between closing and reopening of the Fedwire Funds Service to ninety minutes. This approach would result in approximately three delays to the reopening of the Fedwire Funds Service per year.

The Board requests comment on the following questions:

5. If your institution typically makes payments during the first hour of the Fedwire Funds Service business day, what would be the consequences of delaying the reopening of the Fedwire Funds Service? Are the consequences more significant for certain types of payments? Are there steps your institution, the Reserve Banks, or others

¹⁸ For example, a 15-minute extension to the Fedwire Funds Services closing (from 7:00 p.m. ET to 7:15 p.m. ET) would result in a 15-minute delay to the reopening of the Fedwire business day (from 9:00 p.m. ET to 9:15 p.m. ET).

¹⁹ For example, a 15-minute extension to the NSS closing (from 6:30 p.m. ET to 6:45 p.m. ET) would prompt a 15-minute extension to the Fedwire Funds Service closing (from 7:00 p.m. ET to 7:15 p.m. ET) to allow thirty minutes between the closing of NSS and the closing of the Fedwire Funds Service, which would in turn result in a 15-minute delay to the reopening of the Fedwire Funds Service (from 9:00 p.m. ET to 9:15 p.m. ET).

²⁰ For example, a settlement agent might experience an issue with one of its internal systems that prevents the settlement agent from submitting a settlement file to NSS. Similarly, the Reserve Banks might experience problems with the NSS application, or the electronic channels settlement agents use to submit settlement files to NSS, that prevent settlement agents from submitting files or

prevent the Reserve Banks from processing settlement files submitted by settlement agents.

²¹ For example, a 15-minute extension to the Fedwire Funds third-party cut-off (from 6:45 p.m. ET to 7:00 p.m. ET) would prompt a 15-minute extension to the Fedwire Funds Service closing (from 7:00 p.m. ET to 7:15 p.m. ET) to allow at least 15 minutes between the Fedwire Funds third-party cut-off and the closing of the Fedwire Funds Service, which would in turn delay the reopening of the Fedwire Funds Service by 15 minutes (from 9:00 p.m. ET to 9:15 p.m. ET).

²² See n.16, *supra*.

²³ The average daily value of transactions settled over the Fedwire Funds Service more than doubled from 1997 to 2017, from approximately \$1.1 trillion to approximately \$2.9 trillion.

²⁴ Currently, the Reserve Banks can provide forty-five minute extensions to the Fedwire Funds third-party cut-off (from 6:00 p.m. ET to 6:45 p.m. ET) without delaying the reopening of the Fedwire Funds Service; in such circumstances, the Reserve Banks can provide thirty-minute extensions to the closing of Fedwire Funds Service (from 6:30 p.m. ET to 7:00 p.m. ET) and still maintain (a) a 15-minute window between the Fedwire Funds third-party cut-off and the closing of the Fedwire Funds Service and (b) a two-hour window between the closing and reopening of the Fedwire Funds Service. Under the proposed changes in operating hours, a forty-five minute extension to the Fedwire Funds third-party cut-off (from 6:45 p.m. ET to 7:30 p.m. ET) would require the Reserve Banks to extend the Fedwire Funds Service closing by forty-five minutes (from 7:00 p.m. ET to 7:45 p.m. ET) in order to provide a 15-minute window between the Fedwire Funds third-party cut-off and the closing of the Fedwire Funds Service; this would in turn require the Reserve Banks to delay the reopening of the Fedwire Funds Service by 15 minutes (from 9:00 p.m. ET to 9:15 p.m. ET) in order to maintain the proposed ninety-minute window between the closing of the Fedwire Funds Service and the reopening of the Fedwire Funds Service.

could take to reduce those consequences?

6. How might the proposed compressed end-of-day timeline increase the frequency with which institutions request that the Reserve Banks extend the operating hours of the Fedwire Funds Service?

7. Should the Reserve Banks update their criteria for extending the closing time of the Fedwire Funds Service to include a higher value threshold? If so, would a \$5 billion threshold be appropriate? Would your institution need to make any operational changes to adjust to a \$5 billion threshold?

8. Should the Reserve Banks update their criteria for extending the closing time of the Fedwire Funds Service to reduce the targeted two-hour window between the closing and reopening of the Fedwire Funds Service? Why or why not? Would a window of 90 minutes (or some other period) between the closing and reopening of the Fedwire Funds Service provide sufficient time to perform end-of-day processes at your institution? What operational or technical changes would your institution need to make (if any) to adjust to a reduced window?

9. Given the risks of more-frequent delays to the reopening of the Fedwire Funds Service, should the Federal Reserve simultaneously raise the value threshold for extensions to \$5 billion and reduce the window between the closing and reopening of the Fedwire Funds service? Why or why not?

10. If your institution would need to implement changes to adjust to a \$5 billion threshold or a reduced window between the closing and reopening of the Fedwire Funds Service, when would your institution be ready to implement those changes? If your institution is not ready to implement any required changes by March 2021, which is NACHA's current effective date for implementing the later same-day ACH window, should the Federal Reserve delay implementation of the proposed changes to NSS and the Fedwire Funds Service? Why or why not?

11. Are there any other potential benefits, consequences, risks, or costs that the Federal Reserve should consider when evaluating the adoption of the proposed changes to NSS and the Fedwire Funds Service, including potential risks to financial stability? If so, please provide a description.

B. Competitive Impact Analysis

When considering changes to an existing service, the Board conducts a competitive impact analysis to determine whether there will be a direct and material adverse effect on the

ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve's dominant market position deriving from such legal differences.²⁵ The Board believes that there would be no adverse effects to other service providers resulting from adding a third same-day ACH settlement window and extending the daily operating hours of NSS and the Fedwire Funds Service. As described above, the changes to NSS and the Fedwire Funds Service would allow TCH, the private-sector ACH operator, to implement the third same-day ACH window. This would promote competitive fairness between the two ACH operators.

C. Related Changes to the Federal Reserve Policy on Payment System Risk

Part II of the Federal Reserve Policy on Payment System Risk (PSR policy) governs the provision of intraday credit by the Reserve Banks and establishes procedures—called “posting rules”—for the settlement of debits and credits to institutions' Federal Reserve accounts for different payment types.²⁶ The application of these posting rules determines an institution's intraday account balance and whether the institution has incurred a negative balance (daylight overdraft). The Reserve Banks charge fees for certain daylight overdrafts.

The proposed same-day ACH processing window would require modifying the PSR policy to add a 6:00 p.m. ET posting time for settlement of commercial and government same-day ACH transactions. The Board would also remove the current 5:30 p.m. ET posting time for ACH return transactions, and these return transactions would post at the new 6:00 p.m. ET posting time for same-day ACH transactions.²⁷

Additionally, extending the closing time of the Fedwire Funds Service would affect the fee that an institution pays for daylight overdrafts, because (under section II.C of the PSR policy) the Reserve Banks calculate daylight overdraft fees based on the length of the Fedwire operating day. Specifically, the daylight overdraft fee rate is calculated using an annual rate of 50 basis points (quoted on the basis of a 24-hour day

and a 360-day year) that is prorated to the length of the Fedwire operating day (currently 21.5 hours). Accordingly, the effective annual overdraft rate is (21.5/24) multiplied by 50 basis points, or approximately 0.004479, and the effective daily rate is 0.0000124. If the operating hours of the Fedwire day increase by 30 minutes, the effective annual rate would be (22/24) multiplied by 50 basis points, or approximately 0.004583, and the effective daily rate would increase by about 2.4 percent to 0.0000127.

An institution's daily daylight overdraft charge equals the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft, which is calculated by dividing the sum of its negative uncollateralized Federal Reserve account balances at the end of each minute by the total number of minutes in the Fedwire operating day. Because the Fedwire operating day would increase to 1,321 minutes from the current 1,291 minutes, average daily uncollateralized overdrafts would decrease about 2.3 percent, offsetting in part the increase to the effective daily rate.²⁸ After accounting for changes to both the fee rate and average uncollateralized daylight overdraft calculation, the Board estimates that gross fees before application of fee waivers would increase by less than one-tenth of 1 percent.²⁹

The Board requests comment on all aspects of the proposed changes to the PSR policy.

IV. Federal Reserve Policy on Payment System Risk

Revisions to Section II.A of the PSR Policy

The Board proposes to revise Section II.A of the “Federal Reserve Policy on Payment System Risk” as follows:

A. Daylight Overdraft Definition and Measurement

* * * * *

Post by 1:00 p.m. eastern time:

+/- Commercial check transactions, including returned checks
+/- Government and commercial FedACH SameDay Service transactions, including return items³⁰

²⁸ Analysis assumes that the size and duration of institutions' daylight overdrafts remains unchanged between a 21.5-hour and 22-hour operating day.

²⁹ Institutions' gross daily daylight overdraft fees are summed across a two-week reserve maintenance period and then reduced by a fee waiver of \$150, which is primarily intended to minimize the burden of the PSR policy on institutions that use small amounts of intraday credit.

³⁰ With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items

²⁵ See The Federal Reserve in the Payments System (issued 1984; revised 1990), Federal Reserve Regulatory Service 9–1558.

²⁶ The PSR policy is available at https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.

²⁷ Posting of paper returns of same-day forward items that currently post at 5:30 p.m. ET would also move to the new 6:00 p.m. ET posting time.

- + Same-day Treasury investments.
Post at 5:00 p.m. eastern time;
- +/- Government and commercial FedACH SameDay Service transactions, including return items ³¹
- + Treasury checks, postal money orders, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time
- + Local Federal Reserve Bank checks; these items must be presented before 3:00 p.m. eastern time

Post at 5:30 p.m. eastern time:
+/- Commercial check transactions, including returned checks

Post at 6:00 p.m. eastern time:
+/- Government and commercial FedACH SameDay Service transactions, including return items ³²

Revisions to Section II.C of the PSR Policy

The Board proposes to revise Section II.C of the “Federal Reserve Policy on Payment System Risk” as follows:

C. Pricing

* * * * *

Daylight overdraft fees for uncollateralized overdrafts (or the uncollateralized portion of a partially collateralized overdraft) are calculated using an annual rate of 50 basis points, quoted on the basis of a 24-hour day and a 360-day year. To obtain the effective annual rate for the standard Fedwire operating day, the 50-basis-point annual rate is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 22-hour scheduled Fedwire operating day, the effective annual rate used to calculate daylight overdraft fees equals 45.83 basis points (50 basis points multiplied by 22/24).³³ The effective daily rate is calculated by dividing the effective annual rate by

that only post at 5:00 p.m.; paper returns of same-day forward items that only post at 6:00 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

³¹ With the exception of paper returns of same-day forward items that only post at 6:00 p.m.

³² With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items that only post at 5:00 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

³³ A change in the length of the scheduled Fedwire operating day should not significantly change the amount of fees charged because the effective daily rate is applied to average daylight overdrafts, the calculation of which would also reflect the change in the operating day.

360.³⁴ An institution’s daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution’s average daily uncollateralized daylight overdraft. * * *

* * * * *

Revisions to Section II.F of the PSR Policy

The Board proposes to revise Section II.F of the “Federal Reserve Policy on Payment System Risk” as follows:

F. Special Situations

* * * * *

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers’ banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate (currently 22/24). The daily daylight-overdraft penalty rate is calculated by dividing the annual penalty rate by 360.³⁵ The daylight-overdraft penalty rate applies to the institution’s daily average daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty rate is charged in lieu of, not in addition to, the rate used to calculate daylight overdraft fees for institutions described in this section. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 9, 2019.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2019–09949 Filed 5–15–19; 8:45 am]

BILLING CODE 6210–01–P

³⁴ Under the current 22-hour Fedwire operating day, the effective daily daylight-overdraft rate is truncated to 0.0000127.

³⁵ Under the current 22-hour Fedwire operating day, the effective daily daylight-overdraft penalty rate is truncated to 0.0000382.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC). There will be 15 minutes allotted for public comments at the end of the open session from 3:40 p.m.–3:55 p.m. on July 17, 2019.

DATES: The meeting will be held on July 16, 2019, 1:00 p.m. to 3:00 p.m., EDT (CLOSED) and July 17, 2019, 9:00 a.m. to 5:00 p.m., EDT (OPEN).

ADDRESSES: 4770 Buford Highway NE, Atlanta, GA 30341; Teleconference Number: 1–866–692–4541, Participant Code: 12365987.

FOR FURTHER INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, GA 30341, Telephone (770) 488–3953, Email address: NCIPCBSC@cdc.gov.

SUPPLEMENTARY INFORMATION: Portions of the meeting as designated above will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Chief Operating Officer, CDC pursuant to Public Law 92–463.

Purpose: The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury. The Board of Scientific Counselors makes recommendations regarding policies,

strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, the structure, progress and performance of intramural programs. The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals.

Matters To Be Considered: Day One: The agenda will focus on the secondary peer review of extramural research grant applications received in response to two (2) Notice of Funding Opportunities (NOFO): CE19-004, "Etiologic and Effectiveness Research to Address Polysubstance Impaired Driving" and CE19-005, Research Grants for Preventing Violence and Violence Related Injury (R01). Day Two: The agenda will include discussions on The Injury Center's Role in Addressing Public Health Concerns Related to Marijuana; Impaired Driving, Dating Matters and Health Economics and Policy Research at the National Center for Injury Prevention and Control. Agenda items are subject to change as priorities dictate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019-10143 Filed 5-15-19; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA—CE19-005, Research Grants for Preventing Violence and Violence Related Injury; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA—CE19-005, *Research Grants for Preventing Violence and Violence Related Injury*; May 14–15, 2019, 8:30 a.m.–5:30 p.m., EDT.

Atlanta Marriott Buckhead and Conference Center, 3405 Lenox Road NE, Atlanta, GA 30326 which was published in the **Federal Register** on Thursday, February 21, 2019, Volume 84, Number 35, page 5445.

The meeting is being amended to change the date to July 16–17, 2019, 8:30 a.m.–5:30 p.m., EDT and to change the location to the Georgian Terrace, 659 Peachtree Street NE, Atlanta, GA 30308. The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mikel L. Walters, M.A., Ph.D., Scientific Review Official, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F-63, Atlanta, Georgia 30341, (404) 639-0913; mwalters@cdc.gov.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019-10164 Filed 5-15-19; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970-0389]

Submission for OMB Review; Comment Request

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program

Form 1: Demographic and Service Utilization Data.

Description: Description: The Bipartisan Budget Act of 2018 (Pub. L. 115-123). Section 511(h)(2)(A) of Title V of the Social Security Act, created the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) and authorized the Secretary of HHS (in Section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments, plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk Tribal communities, and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Following each year that Tribal MIECHV grantees implement home visiting services, they must submit Form 1: Demographic and Service Utilization Data. The Form 1 data are used to help ACF better understand the population receiving services from Tribal MIECHV grantees and the degree to which they are using services, as well as better understanding of the Tribal MIECHV workforce. Overall, this information collection will provide valuable information to HHS that will guide understanding of the Tribal MIECHV Program and the provision of technical assistance to Tribal MIECHV Program grantees.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Grantees

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Form 1	25	1	500	12,500

Estimated Total Annual Burden Hours: 12,500.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2019-10167 Filed 5-15-19; 8:45 am]

BILLING CODE 4184-77-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2007-D-0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA

announced the availability of a guidance for industry entitled “Bioequivalence Recommendations for Specific Products” that explained the process that would be used to make product-specific guidances available to the public on FDA’s website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by July 15, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2007-D-0369 for “Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>.

www.regulations.gov and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT:

Wendy Good, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993-0002, 240-402-1146.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products" that explained the process that would be used to make product-specific guidances available to the public on FDA's website at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on February 25, 2019 (84 FR 6005). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products For Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Acetaminophen; Codeine phosphate
Apalutamide
Beclomethasone dipropionate
Benoxinate hydrochloride; Fluorescein sodium
Bictegravir sodium; Emtricitabine; Tenofovir alafenamide fumarate
Brimonidine tartrate
Budesonide
Chlorpheniramine maleate; Ibuprofen; Pseudoephedrine hydrochloride
Cyclosporine
Desloratadine; Pseudoephedrine sulfate
Desmopressin acetate
Efavirenz; Lamivudine; Tenofovir disoproxil fumarate (multiple Reference Listed Drugs)
Eravacycline dihydrochloride
Estradiol; levonorgestrel
Fluticasone furoate
Fluticasone propionate
Fluticasone propionate; Salmeterol xinafoate
Fosnetupitant chloride hydrochloride; Palonosetron hydrochloride
Halcinonide
Lamivudine; Tenofovir disoproxil fumarate
Naproxen
Omeprazole magnesium
Primidone
Timolol maleate
Tobramycin

III. Drug Products for Which Revised Draft Product-Specific Guidances are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Azelaic acid (multiple Reference Listed Drugs)
Betaxolol hydrochloride
Brimonidine tartrate; Brinzolamide
Brinzolamide
Fosfomycin tromethamine
Ivermectin
Methylprednisolone
Prednisolone acetate
Tofacitinib citrate

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go

to <https://www.regulations.gov> and enter Docket No. FDA-2007-D-0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. These guidances are not subject to Executive Order 12866.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidances at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: May 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-10165 Filed 5-15-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-0458 Revision]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) 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 revision of a collection for public comment.

DATES: Comments on the ICR must be received on or before June 17, 2019.

ADDRESSES: Submit your comments to OIRA_submission@omb.eop.gov or via facsimile to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, Sherrette.Funn@hhs.gov or (202) 795-7714. When submitting comments or requesting information, please include the document identifier OS-0990-0458 Revision, and project title for reference.

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: Domestic Violence Housing First Demonstration Evaluation.

Type of Collection: Revision.

OMB No.: 0990-0458.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) within the U.S. Department of Health and Human Services, in partnership with the Office for Victims of Crimes within the U.S. Department of Justice, is seeking approval by OMB for

a revision to add a 24-month follow-up data collection to an existing information collection request entitled, "Domestic Violence Housing First (DVHF) Demonstration Evaluation" (OMB Control Number: HHS-OS-0990-0458). The Washington State Coalition against Domestic Violence (WSCADV) is overseeing and coordinating an evaluation of the DVHF Demonstration project through a contract with ASPE. This quasi-experimental research study involves longitudinally examining the program effects of DVHF on domestic violence survivors' safety and housing stability. The findings will be of interest to the general public, to policy-makers, and to organizations working with domestic violence survivors.

Current data collection that has been approved by OMB includes in-depth, private interviews with 320 domestic violence survivors conducted by trained professional staff. The data are currently approved for collection at study

enrollment (Time 1), and at follow-up interviews every six months after the Time 1 Interview (*i.e.*, 6, 12, and 18 months) to examine the match between needs and services, as well as their safety and housing stability. The proposed revision to the collection would add a fourth follow-up data collection to be administered 24 months after study enrollment (Time 1) to examine longer-term impacts of the Domestic Violence Housing First Demonstration program. The follow-up survey is identical to the one used at the 6, 12, and 18 month follow-up. The respondents are domestic violence survivors who are enrolled in the Domestic Violence Housing First Demonstration Evaluation (OMB Control Number HHS-OS-0990-0458). Study enrollment is taking place over 15 months, so the annualized burden for the 24-month follow-up survey is based on 12/15 (256) of the expected sample (320).

ANNUALIZED BURDEN HOUR TABLE

Form name	Type of respondent	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Follow-up Interview	Domestic violence survivors	256	1	1.25	320
Total					320

Dated: May 8, 2019.

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019-10107 Filed 5-15-19; 8:45 am]

BILLING CODE 4150-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Psychology

Announcement Type: New and Competing Continuation.

Funding Announcement Number: HHS-2019-IHS-INPSY-0001.

Assistance Listing (Catalog of Federal Domestic Assistance) Number: 93.970.

Key Dates

Application Deadline Date: June 20, 2019.

Earliest Anticipated Start Date: July 20, 2019.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) Division of Health Professions Support, is accepting applications for cooperative

agreements for American Indians into Psychology. This program is authorized under section 217 of the Indian Health Care Improvement Act, Public Law 94-437, as amended (IHCA), codified at 25 U.S.C. 1621p. This program is described in the Assistance Listings located at <https://beta.sam.gov> (formerly known as Catalog of Federal Domestic Assistance) under 93.970.

Background

The IHS, an agency within the Department of Health and Human Services (HHS), is responsible for providing Federal health services to American Indians and Alaska Natives (AI/AN). The mission of the IHS is to raise the physical, mental, social, and spiritual health of AI/AN. The IHCA authorizes the IHS to administer programs that are designed to attract and recruit qualified individuals into health professions to ensure the availability of health professionals to serve AI/AN populations. Section 217 of the IHCA authorizes IHS to administer the American Indians into Psychology Program. Within the Section 217 program, IHS provides grants to colleges and universities to develop and maintain psychology education

programs and recruit individuals to become Clinical Psychologists who will provide services to AI/AN people. Psychology program scholarship grants may be used by the educational institution to provide scholarships to Indian students enrolled in clinical psychology education programs. According to the terms and conditions of the psychology program scholarship grant award, scholarship awards are for a 1-year period; additional scholarship support may be awarded to each eligible student for up to four years (maximum).

Purpose

The purpose of this IHS cooperative agreement is to augment the number of Indian Clinical Psychologists who deliver health care services to AI/AN communities. The primary objectives of this cooperative agreement award are to: (1) Recruit and train individuals to be Clinical Psychologists; and (2) provide scholarships to individuals enrolled in schools of clinical psychology to pay tuition, books, fees and stipends for living expenses.

II. Award Information

Funding Instrument

Cooperative Agreement.

Estimated Funds Available

The total funding identified for fiscal year (FY) 2019 is approximately \$722,374. Individual award amounts are anticipated to be between \$200,000 and \$240,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of funds and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Given current funding levels, approximately three awards will be issued under this program announcement.

Period of Performance

The period of performance is for five years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. However, the funding agency (IHS) is anticipated to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for IHS.

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) The IHS program official will work closely with the project's Program Director to ensure timely receipt of the required semi-annual progress reports from each American Indians into Psychology grantee and review them for program compliance.

(2) The IHS program official will provide programmatic technical assistance to the grantee as requested.

(3) The IHS assigned program official will coordinate and conduct site visits and periodic conference calls with grantees and students as time and budget permit.

(4) The IHS program official will work in partnership with the Division of Grants Management (DGM) to ensure all goals and objectives of the proposed project are met.

(5) The IHS program official will provide American Indians into Psychology scholarship materials and policies for student program review.

(6) The IHS program official will initiate default proceedings within 90 days after receiving notification from the grantee that a student has been dismissed from the program, withdrawn

from school, failed to graduate with a Ph.D. in Clinical Psychology, failed to begin a required period of supervised clinical hours required for state licensure, failed to meet the minimum required number of supervised clinical hours prior to licensure, failed to get licensed and begin obligated service time within 90 days, or failed to complete the service.

III. Eligibility Information

1. Eligibility

Public and nonprofit private colleges and universities that offer a Ph.D. or Psy.D. in clinical programs accredited by the American Psychological Association will be eligible to apply for a cooperative agreement under this announcement. However, only one cooperative agreement will be awarded and funded to a college or university per funding cycle.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

A. All schools and training programs must have current, unrestricted accreditation by the American Psychological Association (APA). All institutions must be fully accredited without restrictions at the time of application.

B. All universities and colleges currently participating and submitting competing continuation proposals must include new objectives for this project period.

C. Applications with budget requests that exceed the highest dollar amount outlined under the Award Information, Estimated Funds Available section, or exceed the Period of Performance outlined under the Award Information, Period of Performance section will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on <http://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
 - Application forms:
 - SF-424, Application for Federal Assistance.
 - SF-424A, Budget Information—Non-Construction Programs.
 - SF-424B, Assurances—Non-Construction Programs.
 - Project Narrative (not to exceed 25 pages). See IV.2.A Project Narrative for instructions.
 - Background information on the organization.
 - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished.
 - Budget Justification and Narrative (not to exceed five pages). See IV.2.B Budget Narrative for instructions.
 - One-page Timeframe Chart.
 - Proof of accreditation.
 - Biographical sketches for all Key Personnel.
 - Contractor/Consultant resumes or qualifications and scope of work.
 - Disclosure of Lobbying Activities (SF-LLL).
 - Certification Regarding Lobbying (GG-Lobbying Form).
 - Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
 - Organizational Chart (optional).
 - Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).
- Acceptable forms of documentation include:
- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
 - Face sheets from audit reports.
- These can be found on the FAC website: <https://harvester.census.gov/facdissem/Main.aspx>.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements, with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 25 pages

and must: (1) Have consecutively numbered pages; (2) use black font not smaller than 12 points; (3) and be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 25-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limitations below are for each narrative and budget submitted.

Part 1: Program Information (Limit—5 Pages)

1. Describe how the proposed American Indians into Psychology program will maintain academic and obligated service records using a secure web-based system for scholarship recipients: Student contract information/application, copy of award letter, signed copy of IHS Scholarship contract, notification of academic problem or change, change of academic status, change in graduation date, leave of absence, name change, change of address, notice of impending graduation, placement update, and preferred assignment.

2. Describe how the proposed American Indians into Psychology program coordinator will monitor fulfillment of all contractual obligations incurred by psychology program scholarship recipients.

3. Describe how the proposed American Indians into Psychology program will complete the following activities: Submitting semi-annual status reports, annual reports and budget reports by designated deadline to assure program compliance.

4. Describe how the proposed American Indians into Psychology program will notify IHS assigned program official of new and continuing students' scholarship awards and submission of IHS contracts within 45 days of student scholarship awards.

Part 2: Program Planning and Evaluation (Limit—10 Pages)

Section 1: Program Plans

Describe fully and clearly how the applicant will complete the following and include proposed timelines for completing these activities:

1. Attract and recruit for the clinical psychology programs.
2. Provide mechanisms and resources to increase psychology student enrollment, retention, and graduation.
3. Process for advertising, selecting and notifying Section 217 scholarship students.
4. Provide activities that increase the skills and provide continuing education at the graduate level for clinical psychologists who deliver health services to the AI/AN population.
5. Provide support to the American Indians into Psychology program utilizing career counseling; academic advice; plans to correct academic deficiencies; and other activities to assist student retention.
6. As addressing the opioid crisis is a priority of the Department of Health and Human Services, the program plan may provide information on how the awardee will educate and train students in opioid addiction prevention, treatment and recovery.

Section 2: Program Evaluation

1. Describe fully and clearly the program plans for evaluating success in carrying out the project and on an annual basis conduct a quantitative and qualitative evaluation of the year's activity, identifying what areas of the project need to be improved and how the applicant will make those improvements.

2. Applicants must identify how they will meet on an annual basis with the other project directors and staff under this grant program to share best practices, successes and challenges and to receive Federal grant training.

Part 3: Program Report (Limit—10 Pages)

Section 1: Describe Major Accomplishments Over the Last 24 Months

Please identify and describe significant program achievements associated with the program objectives. Provide a comparison of the actual program accomplishments to the goals established for the project period, or, if applicable, provide justification for the lack of progress.

Section 2: Describe Major Activities Over the Last Five Years

Please identify and summarize major project activities during the project period to improve the management of the grant program.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line of the budget. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the "other" category is justified. For subsequent budget years, the narrative should highlight the changes from year one or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through [Grants.gov](https://www.grants.gov) by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section. Any application received after the application deadline will not be accepted for review. [Grants.gov](https://www.grants.gov) will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact [Grants.gov](https://www.grants.gov) Customer Support (see contact information at <https://www.grants.gov>). If problems persist, contact Mr. Paul Gettys (Paul.Gettys@ihs.gov), DGM Grant Systems Coordinator, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a [Grants.gov](https://www.grants.gov) tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Preaward costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Preaward costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one cooperative agreement will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <http://www.Grants.gov> website to submit an application. Find the application by selecting the “Search Grants” link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). A written waiver request must be sent to GrantsPolicy@ihs.gov with a copy to Robert.Tarwater@ihs.gov. The waiver must: (1) Be documented in writing (emails are acceptable), before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to DGM. Applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in <http://www.Grants.gov> by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be

resolved and a waiver from the agency must be obtained.

- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.

- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

- Applicants must comply with any page limits described in this funding announcement.

- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B, which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <http://fedgov.dnb.com/webform>, or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (“Transparency Act”), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at <https://www.sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several

weeks to process. Applicants may register online at <https://www.sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy website: <http://www.ihs.gov/dgm/policytopics/>.

V. Application Review Information

Weights assigned to each section are noted in parentheses. The 25-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See “Multi-year Project Requirements” at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (10 Points)

1. Applicants must justify the need for their project and provide a plan for the methodology they will use for recruiting clinical psychology students nationwide, provide a program that encourages AI/AN clinical psychologists at the graduate and undergraduate level; and provide a program that increases the skills of and provides continuing education to clinical psychologists at the graduate and undergraduate level.

2. Applicants should identify their experience with other similar projects, including the results of those projects and provide evidence of their past or potential cooperation and experience with AI/AN communities and Tribes.

3. Applicants should demonstrate their program’s substantial benefit to Indian health programs.

B. Project Objective(s), Work Plan and Approach (40 Points)

1. Applicants must clearly describe how they will recruit and train individuals to be clinical psychologists and to provide scholarships to students enrolled in the college of clinical psychology to pay tuition, books, fees, and stipends for living expenses.

2. Applicants must clearly describe how they will collect students’ BIA-4437 forms to verify whether students receiving tuition support in their program are members of eligible, federally-recognized tribes.

3. Applicants must clearly describe how the program will provide support services to psychology students to facilitate their success in the clinical psychology program as well as track their progress.

4. Applicants must clearly describe how the program will assist the clinical psychologist with job placement at eligible Indian health sites and track their payback status to ensure service obligation is fulfilled.

5. Applicants should have a mechanism in place to provide their students with clinical rotation in AI/AN health programs.

6. As addressing the opioid crisis is a priority of the Department of Health and Human Services, describe how the proposed program will educate and train students in opioid addiction prevention, treatment and recovery.

7. Awardees under this funding opportunity must develop a program that meets all of the requirements listed below. Applicants must describe how their program will, at a minimum:

(1) Provide outreach and recruitment for health professions to Indian communities including elementary, secondary, and accredited and accessible community colleges that will be served by the program;

(2) incorporate a program advisory board comprised of representatives from the tribes and communities that will be served by the program;

(3) provide summer enrichment programs to expose Indian students to the various fields of psychology through research, clinical, and experimental activities;

(4) provide stipends to undergraduate and graduate students to pursue a career in psychology;

(5) develop affiliation agreements with tribal colleges and universities, the Service, university affiliated programs, and other appropriate accredited and accessible entities to enhance the education of Indian students;

(6) to the maximum extent feasible, use existing university tutoring, counseling, and student support services; and

(7) to the maximum extent feasible, employs qualified Indians in the program.

C. Program Evaluation (30 Points)

1. Present a plan for evaluating success in carrying out the project on a day-to-day project operation and conduct a quantitative and qualitative evaluation of the year's activities.

2. Identify how the program will adequately document project objectives; and identify what areas of the project need improvements.

3. Demonstrate the detailed steps and timeline to effectively achieve proposed methodology and evaluation plan.

4. Identify how the program director will meet with other Program Directors and staff on an annual basis to share best practices, successes and challenges.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

1. Provide an organizational chart and describe the administrative, managerial and organization arrangements and the facilities and resources to be utilized to conduct the proposed project.

2. List the key personnel who will work with the program. In the appendix, include position descriptions and resumes of program director and key staff with duties and experience. Describe who will be writing progress report.

3. Describe any prior experience in administering similar projects.

E. Categorical Budget and Budget Justification (5 Points)

1. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the Program Director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary to conduct the project.

2. The applicant may include as a direct cost tuition and student support for students who have been selected to receive a scholarship through the American Indians into Psychology cooperative agreement. Scholarship support consists of full time tuition/fees/books/other expenses to include uniforms and monthly stipends for living expenses for 12 months. The current stipend is to be \$1,500 per month.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional Documents Can Be Uploaded as Appendix Items in Grants.gov

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).

- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.*, data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Human Resources within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative

Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement,

Revised 01/07.

D. Cost Principles:

- Uniform Administrative

Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative

Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) <https://rates.psc.gov/> and the Department of Interior (Interior Business Center) <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes>. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting

to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions.

Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at <https://pms.psc.gov>. The applicant is also requested to upload a copy of the FFR (SF–425) into our grants management system, GrantSolutions. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-

tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: (1) The period of performance start date was October 1, 2010 or after, and (2) the primary awardee will have a \$25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at <http://www.ihs.gov/dgm/policytopics/>.

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/>.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>; and <http://www.hhs.gov/civil-rights/index.html>. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/civil-rights/for-individuals/disability/index.html>.

Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call (800) 368-1019 or TDD (800) 537-7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS-690 Assurance of Compliance form which can be obtained from the following website: <http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf>, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW, Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIS), at <http://www.fapis.gov>, before making any award in excess of the simplified acquisition threshold (currently \$150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants,

cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include "Mandatory Grant Disclosures" in subject line), Office: (301) 443-5204; Fax: (301) 594-0899; Email: Robert.Tarwater@ihs.gov

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <http://oig.hhs.gov/fraud/report-fraud/index.asp> (Include "Mandatory Grant Disclosures" in subject line); Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or Email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Eric Pinto, Senior Program Specialist, Office of Human Resources, Division of Health Professions Support, 5600 Fishers Lane, Mail Stop: OHR 11E53A, Rockville, MD 20857, Phone: (301) 443-5086, Fax:

(301) 443-6048, Email: Eric.Pinto@ihs.gov.

2. Questions on grants management and fiscal matters may be directed to: Vanietta Armstrong, Senior Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-4792, Fax: (301) 594-0899, Email:

Vanietta.Armstrong@ihs.gov.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, Fax: (301) 594-0899, E-Mail: Paul.Gettys@ihs.gov.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Chris Buchanan,

Assistant Surgeon General, U.S. Public Health Service, Deputy Director, Indian Health Service.

[FR Doc. 2019-10098 Filed 5-15-19; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Nursing

Announcement Type: New and Competing Continuation.

Funding Announcement Number:

HHS-2019-IHS-NU-0001.

Assistance Listing (Catalog of Federal Domestic Assistance) Number: 93.970.

Key Dates

Application Deadline Date: June 20, 2019.

Earliest Anticipated Start Date: July 20, 2019.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS), Division of Health Professions Support, is accepting cooperative agreement

applications for the American Indians into Nursing Program. This program is authorized under: Section 112 of the Indian Health Care Improvement Act, Public Law 94–437, as amended (IHCIA), codified at 25 U.S.C. 1616e. This program is described in the Assistance Listings located at <https://beta.sam.gov> (formerly known as Catalog of Federal Domestic Assistance) under 93.970.

Background

The IHS, an agency within the Department of Health and Human Services (HHS), is responsible for providing Federal health services to American Indians and Alaska Natives (AI/AN). The mission of the IHS is to raise the physical, mental, social, and spiritual health of AI/AN. The IHCIA authorizes the IHS to provide cooperative agreements to colleges, universities, and other entities to develop and maintain nursing education programs and recruit individuals to become registered nurses, certified nurse midwives, and nurse practitioners who will provide services to AI/AN people. The programs administered are designed to attract and recruit qualified AI/AN individuals into nursing and advanced practice nursing professions.

Purpose

The purpose of this IHS cooperative agreement is to recruit, retain, graduate and increase the number of registered nurses, certified nurse midwives and nurse practitioners who deliver health care services to AI/AN communities. The primary objectives of this cooperative agreement grant award are to: (1) Recruit and train AI/AN individuals to be baccalaureate prepared nurses; (2) facilitate associate degree registered nurses becoming baccalaureate prepared registered nurses; (3) provide a program that prepares practicing registered nurses for advanced nursing education; (4) provide a program that encourages registered nurses and advanced practice nurses to provide or continue to provide, health care services to AI/AN communities; and (5) provide scholarships to AI/AN individuals that will cover tuition, books, fees, room and board, stipend for living expenses, or other expenses incurred in connection with baccalaureate level nursing or advanced practice nursing programs. This notice of funding opportunity solicits applications that provide a preference to AI/AN students and a curriculum with a rural health and public health focus.

Limited Competition Justification

The limitation is based on IHS geographically high need areas: Navajo Area (New Mexico, Arizona), Billings Area (Montana, Wyoming), Great Plains Area (South Dakota, North Dakota, Nebraska), Albuquerque Area (Colorado, New Mexico, Nevada), and Phoenix Area (Nevada, Utah, Arizona). Historically and currently, these IHS areas have a high need for both registered nurses and advanced practice nurses. Many IHS service units within these areas are designated by the Health Resource and Service Administration (HRSA) as Health Professions Shortage Areas (HPSA). Additionally, many of these states have American Indian Serving Institutions (Tribal colleges and universities) that feed into universities with nursing programs.

II. Award Information

Funding Instrument

Cooperative Agreement.

Estimated Funds Available

The total funding identified for fiscal year (FY) 2019 is approximately \$1,686,706. Individual award amounts are anticipated to be between \$300,000 and \$400,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately five awards will be issued under this program announcement.

Period of Performance

The period of performance is for five years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. However, the funding agency (IHS) is anticipated to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for the IHS.

Substantial IHS Involvement

Description for Cooperative Agreement

(1) An IHS assigned program official will work with project director to ensure timely receipt of progress and audit reports and to ensure program compliance.

(2) An IHS program official will provide programmatic technical assistance to awardees as needed.

(3) An IHS program official will coordinate and conduct site visits as needed, if funds are available for travel.

(4) An IHS program official will conduct semi-annual conference calls with awardees and students.

(5) An IHS program official will work with the Division of Grants Management (DGM) to ensure all goals and objectives of the program are met.

(6) An IHS program official will provide American Indians into Nursing programs and scholarship recipients with information on IHS scholarship service obligation requirements.

(7) An IHS program official will initiate default proceedings within 90 days after receiving notification from the Program Director that a student has been dismissed from the nursing program, withdrawn from school, failed to graduate with a nursing degree, or failed to get licensed and begin obligated service time within 90 days of graduation.

III. Eligibility Information

1. Eligibility

Pursuant to 25 U.S.C. 1616e(a), the following entities are eligible:

(a) Accredited public or private schools of nursing,

(b) accredited Tribally controlled community colleges and Tribally controlled post-secondary vocational institutions, and

(c) nurse midwife programs and nurse practitioner programs, that are provided by any public or private institution.

All schools of nursing must be fully accredited without restrictions at the time of application by a national nurse educational accrediting body or state approval body recognized by the Secretary of the U.S. Department of Education for the purposes of nursing education. The schools offering a degree in nurse midwifery must provide verification of accreditation by the American College of Nurse Midwives. Tribally-controlled community colleges nursing programs and post-secondary vocational institutions must be fully accredited by an appropriate recognized nursing accrediting body without restrictions.

(a) In accordance with the IHCIA, funding preference will be given to applicants who have: (1) Programs that provide a preference to AI/AN; (2) programs that train nurse midwives or nurse practitioners; and (3) programs that are interdisciplinary, *i.e.*, with medicine, pharmacy, dental and behavioral health students.

(b) *Priorities*: All complete, eligible applications will be considered. If more than one university and college application is received from an IHS area, only one award will be made to that particular area providing a DNP, MSN, or BSN program.

1. *Priority I*: At least two awards to public or private college or university, school of nursing which provides DNP, MSN, BSN, ADN (registered nurse, nurse practitioner, nurse midwife) degrees, not to exceed \$400,000 per year up to a project period of five years.

2. *Priority II*: At least three awards to a Tribally-controlled community college, school of nursing which provides BSN and ADN (registered nurse) degrees, not to exceed \$400,000 per year up to a project period of five years.

(c) *Other preferences*: Schools of nursing that have transcultural, cultural competency, and rural and public health care focus.

Current American Indians into Nursing awardees are eligible to apply for competing continuation funding under this announcement and must demonstrate that they have complied with previous terms and conditions of the American Indians into Nursing cooperative agreement in order to receive funding under this announcement.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under the Award Information, Estimated Funds Available section, or exceed the Period of Performance outlined under the Award Information, Period of Performance section will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement is hosted on <http://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
 - Application forms:
 - SF-424, Application for Federal Assistance.
 - SF-424A, Budget Information—Non-Construction Programs.
 - SF-424B, Assurances—Non-Construction Programs.
 - Project Narrative (not to exceed 25 pages). See IV.2.A Project Narrative for instructions.
 - Background information on the organization.
 - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished.
 - Budget Justification and Narrative (not to exceed 5 pages). See IV.2.B Budget Narrative for instructions.
 - One-page Timeframe Chart.
 - Proof of accreditation.
 - Biographical sketches for all Key Personnel.
 - Contractor/Consultant resumes or qualifications and scope of work.
 - Disclosure of Lobbying Activities (SF-LLL).
 - Certification Regarding Lobbying (GG-Lobbying Form).
 - Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
 - Organizational Chart (optional).
 - Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).
- Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
 - Face sheets from audit reports.
- Applicants can find these on the FAC website: <https://harvester.census.gov/facdissem/Main.aspx>.

Public Policy Requirements

All Federal public policies apply to IHS cooperative agreements, with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 25 pages and must: (1) Have consecutively numbered pages; (2) use black font not smaller than 12 points; (3) and be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 25-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limitations below are for each narrative and budget submitted.

Part 1: Program Information (Limit—5 Pages)

Section 1: Needs

Present the comprehensive framework of the proposed American Indians into Nursing program. Clearly describe the unmet AI/AN nursing workforce needs in AI/AN communities. Describe the social determinants and health disparities that impact AI/AN communities and how the proposed program will serve the IHS and Tribal health care programs as well as support to IHS scholarship recipients. Discuss how these social determinants have historically affected access to AI/AN health care and have impacted AI/AN student's access to education specifically nursing education. Include the purpose and background of the program and prior experience with nurse recruitment programs.

Part 2: Program Planning and Evaluation (Limit—10 Pages)

Section 1: Program Plans

American Indians into Nursing program applicants must develop a comprehensive, succinct, well organized work plan to address the proposed project. The information should include the elements below but is not limited to the following: (1) Describe the administration of the program-strategies, activities, methods, techniques, or steps that will be used to achieve objectives in proposed project; (2) describe the strategy to attract pre-nursing students and recruit, retain, and graduate AI/AN nursing students and identify actions to monitor IHS scholarship recipients post-graduation for IHS service obligation; (3) describe how the activities of the project are defined by objectives and how the

project will achieve the desired outcomes; (4) include a plan to achieve sustainability after the cooperative agreement is complete; (5) describe how the program will incorporate support to AI/AN nursing students who have experienced the social determinants in AI/AN communities; (6) describe how the program will support AI/AN students in meeting their social, physical, spiritual and academic needs; and, (7) as addressing the opioid crisis is a priority of the Department of Health and Human Services, the project plan may provide information on how the awardee will educate and train students in opioid addiction prevention, treatment and recovery.

Section 2: Program Evaluation

Applicant must provide a complete program evaluation plan that describes the projects methodology and strategies for assessing the progress of the objectives and outcomes of their program. The evaluation should address the successes, failures, and continuing improvements.

Part 3: Program Report (Limit—10 Pages)

Section 1: Describe Your Organization's Significant Program Activities and Accomplishments Over the Past Five Years Associated With the Goals of This Announcement

Previous awardees shall include objectives, strategies, and a brief description of the following for program function and or activity involved: (1) Compare actual accomplishments to the goals established for the period; (2) provide description of internal and external collaboration, new resources secured, interventions, successes, barriers identified and plans for the next quarter (academic year); (3) indicate reasons for slippage where established goals were not met and plan of action to overcome slippages; (4) indicate the number of current AI/AN recipients in the program and their academic status; and (5) indicate the number of AI/AN recipients placed in IHS and Tribal facilities and whom have completed their service obligations.

Section 2: Describe Major Activities Over the Last 24 Months

Please identify and summarize recent major project activities of the work done during the project period. Program activities shall include: Recruitment, retention and support activities to student, graduate and evaluation demonstrating performance measures.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line of the budget. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the "other" category is justified. For subsequent budget years, the narrative should highlight the changes from year one or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>). If problems persist, contact Mr. Paul Gettys (Paul.Gettys@ihs.gov), DGM Grant Systems Coordinator, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Preaward costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Preaward costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one cooperative agreement will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <http://www.Grants.gov> website to submit an application. Find the application by selecting the "Search Grants" link on

the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). A written waiver request must be sent to GrantsPolicy@ihs.gov with a copy to Robert.Tarwater@ihs.gov. The waiver must: (1) Be documented in writing (emails are acceptable), before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to DGM. Applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not adhere to the timelines for System for Award Management (SAM) and *Grants.gov* and/or that fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative means.

Please be aware of the following:

- Please search for the application package in <http://www.Grants.gov> by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for

SAM and *Grants.gov* could take up to 20 working days.

- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- All applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B, which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <http://fedgov.dnb.com/webform>, or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at <https://www.sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see SAM.gov for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at <https://www.sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the

IHS Grants Management, Grants Policy website: <http://www.ihs.gov/dgm/policytopics/>.

V. Application Review Information

Weights assigned to each section are noted in parentheses. The 25 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (10 Points)

- Applications must justify overall need of the program and clearly demonstrate the ability to administer the cooperative agreement, and indicate prior experience with similar programs.
- Describe the target population receiving IHS scholarships (preference will be given to schools of nursing that recruit, retain and graduate AI/AN veterans and veterans who have medical military experience).
- Describe how the program will increase the number of registered nurses, nurse midwives and nurse practitioners in IHS.
- Describe relevance of the program relating the objectives to the purposes of the cooperative agreement.
- Describe the differences between the current and proposed activities (previous awardees).

B. Project Objective(s), Work Plan and Approach (40 Points)

Applications must clearly state specific, time-framed, measurable objectives for the goals related to the purpose of the IHS nursing cooperative agreement.

(1) Objectives:

- Describe how the program will increase the number of AI/AN nursing students that are recruited, retained and graduated from school of nursing.
- Describe how the program will recruit AI/AN students who are veterans and veterans who have experience as an emergency medical technician (EMT), hospital corpsman, paramedic/military medic, license vocational/practical nurse and nurses (associate or diploma nurse).

(c) Describe how the program will offer or establish formal bridge program agreements between Tribal colleges, universities.

(d) Describe how the program will provide a program that increases the skills of, and provide continuing education to registered nurses, nurse practitioners and nurse midwives.

(e) Describe how the program will assist IHS program officials with job placement and track the IHS scholarship recipient's service obligation.

(f) Describe clearly how the program will collect students' BIA-4437 forms to verify whether students receiving tuition support in their program are members of eligible, federally-recognized tribes.

(g) As addressing the opioid crisis is a priority of the Department of Health and Human Services, describe how the proposed program will educate and train students in opioid addiction prevention, treatment and recovery.

(2) Methodology:

(a) Describe strategies, activities, steps, timelines, and staff for implementation of proposal of projects.

(b) Describe the methodology of how IHS scholarships will be awarded to nursing students.

(c) Provide evidence supporting the proposed methodologies using historical data and prior experiences.

(3) Approach:

(a) Describes how the program will establish or collaborate with existing IHS and Tribal programs and colleges.

(i) To establish an agreement for clinical rotations.

(ii) To establish a faculty exchange program to enhance cultural competency and faculty strength.

(iii) Offer formal bridge programs agreements between Tribal colleges and universities so as to provide a program that increases the skills of, and provide continuing education to nurses, nurse practitioners, and nurse midwives.

(b) Include challenges that are likely to be encountered or have been a challenge in designing and implementing the activities in the work plan and approaches that will be used to resolve challenges.

(c) Describe how the program will sustain the project after the period of performance ends. Include in the sustainability plan the barriers to achieving self-sufficiency.

C. Program Evaluation (30 Points)

Applicant must include an evaluation plan that describes strategies for assessing the progress and outcomes of their projects. The evaluation plan should be linked to the objectives and purpose of the cooperative agreement.

The proposed project shall have evaluation measures that demonstrate how the program is meeting identified goals and objectives where programs can collect, track, and report performance measures on a semi-annual basis and for periodic audit reports. Applicants must include how the program will collect and manage student scholarship data. Applicants must describe any potential obstacles for implementing the program performance evaluation and how those obstacles will be addressed.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

Provide information on applicant's organization, philosophy, and practice methods. Describe how all will contribute to the ability to conduct program requirements and meet American Indians into Nursing program/cooperative agreement purpose, objectives, and expectations. Include nursing accreditation documentation. All schools of nursing that are associated with the project and have conferring degrees must be accredited.

E. Categorical Budget and Budget Justification (5 Points)

(1) Personnel costs: Applicants shall identify one Program Director. The Program Director must be a licensed registered nurse.

(2) Key support personnel: Provide names, title, position description, salary, and fringe benefits. Administrative cost is limited to 8% of the award.

(3) Consultants: Provide names, affiliations and qualifications of each consultant, including expected rate of compensation, travel, per diem and other related costs.

(4) Travel: Name conferences or other recruitment events, airline tickets, lodging, per diem, booth, public transportation, or other related costs.

(5) Equipment: Must be related to the objectives of the project, retained by awardee, use in accordance with the terms of the cooperative agreement award, and must comply with procurement requirements for Federal grant and cooperative agreements.

(6) Scholarships: Must cover tuition, fees, books, stipend, and other related educational expenses. The proposed project must use IHS scholarship funds in a manner that will meet the needs of eligible AI/AN students. The budget narrative must indicate the number of students to receive scholarship for each year of the cooperative agreement and the amount of each scholarship per student.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional Documents Can Be Uploaded as Appendix Items in Grants.gov

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (i.e., data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency

Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

2. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) <https://rates.psc.gov/> and the Department of Interior (Interior

Business Center) <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes>. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443-5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF-425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at <https://pms.psc.gov>. The applicant is also requested to upload a copy of the FFR (SF-425) into our grants management system, GrantSolutions. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Grantees are responsible and accountable for accurate information

being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: (1) The period of performance start date was October 1, 2010 or after, and (2) the primary awardee will have a \$25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at <http://www.ihs.gov/dgm/policytopics/>.

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful

access to their programs by persons with limited English proficiency. Please see <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/>.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>; and <http://www.hhs.gov/civil-rights/index.html>. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/civil-rights/for-individuals/disability/index.html>. Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call (800) 368-1019 or TDD (800) 537-7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS-690 Assurance of Compliance form which can be obtained from the following website: <http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf>, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW, Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), at <http://www.fapiis.gov>, before making any award in excess of the simplified acquisition threshold (currently \$150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. The IHS will

consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include "Mandatory Grant Disclosures" in subject line); Office: (301) 443-5204; Fax: (301) 594-0899; Email: Robert.Tarwater@ihs.gov

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <http://oig.hhs.gov/fraud/report-fraud/index.asp> (Include "Mandatory Grant Disclosures" in subject line); Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or

Email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Eric Pinto, Senior Program Specialist, Office of Human Resource, Division of Health Professions Support, 5600 Fishers Lane, Mail Stop: OHR 11E53A, Rockville, MD 20857, Phone: (301) 443-5086, Fax: (301) 443-6048, Email: Eric.Pinto@ihs.gov.
2. Questions on grants management and fiscal matters may be directed to: Vanietta Armstrong, Senior Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-4792, Fax: (301) 594-0899, Email: Vanietta.Armstrong@ihs.gov.
3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, Fax: (301) 594-0899, Email: Paul.Gettys@ihs.gov.

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Chris Buchanan,

Assistant Surgeon General, U.S. Public Health Service, Deputy Director, Indian Health Service.

[FR Doc. 2019-10097 Filed 5-15-19; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Medicine

Announcement Type: Competing Continuation.

Funding Announcement Number: HHS-2019-IHS-INMED-0001.

Assistance Listing (Catalog of Federal Domestic Assistance) Number: 93.970.

Key Dates

Application Deadline Date: June 20, 2019.

Earliest Anticipated Start Date: July 20, 2019.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for the Indians into Medicine Program (INMED). This program is authorized under 25 U.S.C. 1616g, Indian Health Care Improvement Act, Public Law 94-437, as amended (IHCA). This program is described in the Assistance Listings located at <https://beta.sam.gov> (formerly known as Catalog of Federal Domestic Assistance) under 93.970.

Background

The IHS, an agency within the Department of Health and Human Services (HHS), is responsible for providing Federal health services to American Indians and Alaska Natives (AI/AN). The mission of the IHS is to raise the physical, mental, social, and spiritual health of AI/AN. The IHCA authorizes the IHS to administer programs that are designed to attract and recruit qualified Indians into health professions and to ensure the availability of health professionals to serve AI/AN populations.

Purpose

The purpose of the Indians into Medicine Program (INMED) is to augment the number of Indian health professionals serving Indians by encouraging Indians to enter the health professions and removing the multiple barriers to serving Indians.

II. Award Information

Funding Instrument

Grant.

Estimated Funds Available

The total funding identified for fiscal year (FY) 2019 is approximately \$397,360. Individual award amounts are anticipated to be between \$170,000 and \$195,000. The funding available for

competing and subsequent continuation awards issued under this announcement is subject to the availability of funds and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately two awards will be issued under this program announcement.

Period of Performance

The period of performance is for five years.

III. Eligibility Information

1. Eligibility

Public and nonprofit private colleges and universities with medical and other allied health programs accredited by an accrediting agency recognized by the U.S. Secretary of Education are eligible to apply for the grants. Public and nonprofit private colleges that operate nursing programs are not eligible under this announcement since the IHS currently funds the nursing recruitment grant program.

The existing INMED grant program at the University of North Dakota has as its target population Indian Tribes primarily within the States of North Dakota, South Dakota, Nebraska, Wyoming, and Montana. A college or university applying under this announcement must propose to conduct its program among Indian Tribes in states not currently served by the University of North Dakota INMED program.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under the Award Information, Estimated Funds Available section, or exceed the Period of Performance outlined under the Award Information, Period of Performance section will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement is hosted on <http://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
 - Application forms:
 - SF-424, Application for Federal Assistance.
 - SF-424A, Budget Information—Non-Construction Programs.
 - SF-424B, Assurances—Non-Construction Programs.
 - Project Narrative (not to exceed 25 pages). See IV.2.A Project Narrative for instructions.
 - Background information on the organization.
 - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished.
 - Budget Justification and Narrative (not to exceed 5 pages). See IV.2.B Budget Narrative for instructions.
 - One-page Timeframe Chart.
 - Proof of accreditation.
 - Biographical sketches for all Key Personnel.
 - Contractor/Consultant resumes or qualifications and scope of work.
 - Disclosure of Lobbying Activities (SF-LLL).
 - Certification Regarding Lobbying (GG-Lobbying Form).
 - Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
 - Organizational Chart (optional).
 - Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).
- Acceptable forms of documentation include:
- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
 - Face sheets from audit reports. These can be found on the FAC website: <https://harvester.census.gov/facdissem/Main.aspx>.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements,

with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate document that is no more than 25 pages and must: (1) Have consecutively numbered pages; (2) use black font not smaller than 12 points; (3) and be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 25-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limitations below are for each narrative and budget submitted.

Part 1: Program Information (Limit—5 Pages)

Section 1: Needs

a. State specific objectives of the project, and the extent to which they are measurable and quantifiable, significant to the needs of American Indian/Alaska Native people, logical, complete, and consistent with the purpose of 25 U.S.C. 1616g.

b. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

c. Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each 12-month budget period.

d. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

e. State clearly the criteria by which the project's progress will be evaluated

and by which the success of the project will be determined.

f. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

g. Identify who will perform the evaluation and when.

Part 2: Program Planning and Evaluation (Limit—10 Pages)

Section 1: Program Plans

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, *i.e.*, although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

e. The IHClA requires that applicants agree to provide a program which:

(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations which will be served by the program;

(B) incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program;

(C) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions;

(D) provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university;

(E) and to the maximum extent feasible, employs qualified Indians in the program.

f. Describe the college's or university's ability to meet this requirement.

g. As addressing the opioid crisis is a priority of the Department of Health and Human Services, the program plan may provide information on how the awardee will educate and train students in opioid addiction prevention, treatment and recovery.

Section 2: Program Evaluation

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

d. Identify affiliation agreements with Tribal community colleges, the IHS, university affiliated programs, and other appropriate entities to enhance the education of Indian students.

e. Identify existing university tutoring, counseling and student support services.

Part 3: Program Report (limit—10 pages)

Section 1: Describe Your Organization's Significant Program Activities and Accomplishments Over the Past Five Years Associated With the Goals of This Announcement

a. Provide data and supporting documentation to substantiate need for recruitment.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

c. Describe methodology to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS Nursing Recruitment grant program.

B. Budget Narrative (limit—5 pages)

Provide a budget narrative that explains the amounts requested for each line of the budget. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the "other" category is justified. For subsequent budget years, the narrative should highlight the changes from year

1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>). If problems persist, contact Mr. Paul Gettys (Paul.Gettys@ihs.gov), DGM Grant Systems Coordinator, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Preaward costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Preaward costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one cooperative agreement will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <http://www.Grants.gov> website to submit an application. Find the application by selecting the "Search Grants" link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). A written

waiver request must be sent to GrantsPolicy@ihs.gov with a copy to Robert.Tarwater@ihs.gov. The waiver must: (1) Be documented in writing (emails are acceptable), before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to DGM. Applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in <http://www.Grants.gov> by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to twenty working days.

• Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

• All applicants must comply with any page limits described in this funding announcement.

• After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number.

IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <http://fedgov.dnb.com/webform>, or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at <https://www.sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2-5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at <https://www.sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy website: <http://www.ihs.gov/dgm/policytopics/>.

V. Application Review Information

Weights assigned to each section are noted in parentheses. The 25-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative

section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (10 Points)

1. State specific objectives of the project, and the extent to which they are measurable and quantifiable, significant to the needs of Indian people, logical, complete, and consistent with the purpose of 25 U.S.C. 1616g.

2. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

3. Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the time frame needed to accomplish each task. Time frames should be projected in a realistic manner to assure that the scope of work can be completed within each 12-month budget period.

4. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

5. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

6. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

7. Identify who will perform the evaluation and when.

B. Project Objective(s), Work Plan and Approach (40 Points)

1. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

2. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the

project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

3. Describe any prior experience in administering similar projects.

4. Discuss the commitment of the organization, *i.e.*, although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

5. Describe the ability to provide outreach and recruitment for health professions to Indian communities including, but not limited to, elementary and secondary schools and community colleges located on Indian reservations which will be served by the program.

6. Describe the organization's plan to incorporate a program advisory board comprised of representatives from the Tribes and communities which will be served by the program.

7. To the maximum extent feasible, employ qualified Indians in the program.

8. Describe how the awardee will report on the impact of the program on recruitment and retention of AI/AN participants in medical school, other health professional programs, and in employment in Indian health programs.

9. Describe how the awardee will educate and train students in opioid addiction prevention, treatment and recovery.

C. Program Evaluation (30 Points)

1. Describe the current and proposed participation of Indians (if any) in your organization.

2. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

3. Describe the methodology to be used to access the target population.

4. Identify existing university tutoring, counseling and student support services.

5. Provide data and supporting documentation to substantiate need for recruitment.

6. Provide information on how recruitment and retention data will be obtained, analyzed and stored; specifically provide information on how data on participants, including any sensitive Personally Identifiable

Information (PII), will be securely housed.

7. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

8. Describe methodology to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS nursing recruitment grant program.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

1. Provide an organizational chart and describe the administrative, managerial and organization arrangements and the facilities and resources to be utilized to conduct the proposed project.

2. List the key personnel who will work with the program. In the appendix, include position descriptions and resumes of program director and key staff with duties and experience. Describe who will be writing progress report.

3. Describe any prior experience in administering similar projects.

E. Categorical Budget and Budget Justification (5 Points)

1. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary to conduct the project.

2. The available funding level of between \$170,000 and \$195,000 is inclusive of both direct and indirect costs or 8 percent of total direct costs. Because this project is for a training grant, the HHS policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education.

3. The applicant may include as a direct cost student support costs related to tutoring, counseling, and support for students enrolled in a health career program of study at the respective college or university. Tuition and stipends for regular sessions are not

allowable costs of the grant; however, students recruited through the INMED program may apply for funding from the IHS Scholarship Programs.

4. Provide budgetary information for summer preparatory programs for Indian students, who need enrichment in the subjects of math and science in order to pursue training in the health professions.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional Documents Can Be Uploaded as Appendix Items in Grants.gov

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Human Resources within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

2. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in

accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) <https://rates.psc.gov/> and the Department of Interior (Interior Business Center) <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes>. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443-5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report

must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Report (FFR or SF-425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at <https://pms.psc.gov>. The applicant is also requested to upload a copy of the FFR (SF-425) into our grants management system, GrantSolutions. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the period of performance is made up of more than one budget period) and where: (1) The period of performance start date was October 1, 2010 or after, and (2) the primary awardee will have a \$25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy website at <http://www.ihs.gov/dgm/policytopics/>.

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/>.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>; and <http://www.hhs.gov/civil-rights/index.html>. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/civil-rights/for-individuals/disability/index.html>. Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call (800) 368-1019 or TDD (800) 537-7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS-690 Assurance of Compliance form which can be obtained from the following website: <http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf>,

and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW, Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), at <http://www.fapiis.gov>, before making any award in excess of the simplified acquisition threshold (currently \$150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director,

5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857.

(Include "Mandatory Grant Disclosures" in subject line) *Office:* (301) 443-5204, *Fax:* (301) 594-0899, *Email:* Robert.Tarwater@ihs.gov.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <http://oig.hhs.gov/fraud/report-fraud/index.asp>.

(Include "Mandatory Grant Disclosures" in subject line) *Fax:* (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or, *Email:* MandatoryGranteeDisclosures@oig.hhs.gov.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Jackie Santiago, Division of Health Professions Support, Office of Human Resources, 5600 Fishers Lane, Mailstop: 11E22, *Telephone:* (301) 443-2486, *Fax:* (301) 443-4815, *Email:* Jackie.Santiago@ihs.gov.

2. Questions on grants management and fiscal matters may be directed to: Vanietta Armstrong, Senior Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, *Phone:* (301) 443-4792, *Fax:* (301) 594-0899, *Email:* vanietta.armstrong@ihs.gov.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, *Phone:* (301) 443-2114; or the DGM main line (301) 443-5204, *Fax:* (301) 594-0899, *Email:* Paul.Gettys@ihs.gov.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the

HHS mission to protect and advance the physical and mental health of the American people.

Chris Buchanan,

Assistant Surgeon General, U.S. Public Health Service Deputy Director, Indian Health Service.

[FR Doc. 2019-10096 Filed 5-15-19; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Request for Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) Office of the Director will publish periodic summaries of proposed

projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ellen Gadbois, Office of the Director, NIH, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496-9838 or Email your request, including your address to: gadboisel@od.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have

practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Request for Human Embryonic Stem Cell Line to be approved for Use in NIH Funded Research. OMB No. 0925-0601—Expiration Date 07/31/2019—EXTENSION—Office of the Director, National Institutes of Health (NIH).

Need and Use of Information Collection: The form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. Applicants may submit applications at any time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 255 per respondent.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others with hESC lines	5	3	17	255
Total	5	15		255

Dated: May 10, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019-10154 Filed 5-15-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2017-0851]

Imposition of Conditions of Entry for Certain Vessels Arriving to the United States From the Republic of Djibouti

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it will impose conditions of entry on vessels arriving from the Republic of

Djibouti. Conditions of entry are intended to protect the United States from vessels arriving from countries that have been found to have deficient port anti-terrorism measures in place.

DATES: The policy announced in this notice will become effective May 30, 2019.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Zeke Lyons, International Port Security Program, United States Coast Guard, telephone 202-372-1296, Ezekiel.J.Lyons@uscg.mil

SUPPLEMENTARY INFORMATION:

Discussion

The authority for this notice is 5 U.S.C. 552(a) ("Administrative Procedure Act"), 46 U.S.C. 70110 ("Maritime Transportation Security Act"), and Department of Homeland Security Delegation No. 0170.1(II)(97.f).

As delegated, section 70110(a) authorizes the Coast Guard to impose conditions of entry on vessels arriving in U.S. waters from ports that the Coast Guard has not found to maintain effective anti-terrorism measures.

On August 18, 2016 the Coast Guard found that ports in the Republic of Djibouti failed to maintain effective anti-terrorism measures and that the Republic of Djibouti's designated authority's oversight, access control, security monitoring, security training programs, and security plans drills and exercises are all deficient.

On February 6, 2017, as required by 46 U.S.C. 70109, the Republic of Djibouti was notified of this determination and given recommendations for improving antiterrorism measures and 90 days to respond. In May 2017 and September 2018, the Coast Guard revisited the Republic of Djibouti to review Djibouti's

progress on correcting the security deficiencies. The Coast Guard determined that Djibouti failed to maintain effective anti-terrorism measures with the exceptions of two port

facilities: The Doraleh Container Terminal and the Doraleh Oil Terminal (Horizon).

Accordingly, beginning May 30, 2019, the conditions of entry shown in Table

1 will apply to any vessel that visited a port in the Republic of Djibouti, with the exception of the Doraleh Container Terminal and the Doraleh Oil Terminal (Horizon), in its last five port calls.

TABLE 1—CONDITIONS OF ENTRY FOR VESSELS VISITING PORTS IN THE REPUBLIC OF DJIBOUTI

No.	Each vessel must:
1	Implement measures per the vessel's security plan equivalent to Security Level 2 while in a port in the Republic of Djibouti. As defined in the ISPS Code and incorporated herein, "Security Level 2" refers to the "level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident."
2	Ensure that each access point to the vessel is guarded and that the guards have total visibility of the exterior (both landside and waterside) of the vessel while the vessel is in ports in the Republic of Djibouti.
3	Guards may be provided by the vessel's crew; however, additional crewmembers should be placed on the vessel if necessary to ensure that limits on maximum hours of work are not exceeded and/or minimum hours of rest are met, or provided by outside security forces approved by the vessel's master and Company Security Officer. As defined in the ISPS Code and incorporated herein, "Company Security Officer" refers to the "person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer."
4	Attempt to execute a Declaration of Security while in a port in the Republic of Djibouti.
5	Log all security actions in the vessel's security records.
6	Report actions taken to the cognizant Coast Guard Captain of the Port (COTP) prior to arrival into U.S. waters.
7	In addition, based on the findings of the Coast Guard boarding or examination, the vessel may be required to ensure that each access point to the vessel is guarded by armed, private security guards and that they have total visibility of the exterior (both landside and waterside) of the vessel while in U.S. ports. The number and position of the guards has to be acceptable to the cognizant COTP prior to the vessel's arrival.

The following countries do not maintain effective anti-terrorism measures in their ports and are therefore subject to conditions of entry:

Cambodia, Cameroon, Comoros, Côte d'Ivoire, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, Iran, Iraq, Liberia, Libya, Madagascar, Micronesia, Nauru, Nigeria, Sao Tome and Principe, Seychelles, Syria, Timor-Leste, Venezuela, and Yemen.

The current Port Security Advisory is available at: <http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/International-Domestic-Port-Assessment/>.

Dated: May 7, 2019.

Daniel B. Abel,

Deputy Commandant for Operations, USCG.

[FR Doc. 2019-10153 Filed 5-15-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4426-DR; Docket ID FEMA-2019-0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA-4426-DR), dated April 17, 2019, and related determinations.

DATES: The declaration was issued April 17, 2019.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 17, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of February 19 to

March 20, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal

funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Cherokee, Colbert, DeKalb, Franklin, Jackson, Lamar, Madison, Marion, Morgan, and Winston Counties for Public Assistance.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–10198 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4430–DR; Docket ID FEMA–2019–0001]

The Sac & Fox Tribe of the Mississippi in Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Sac & Fox Tribe of the Mississippi in Iowa (FEMA–4430–DR), dated April 29, 2019, and related determinations.

DATES: The declaration was issued April 29, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 29, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Sac & Fox Tribe of the Mississippi in Iowa resulting from severe storms and flooding during the period of March 13 to April 1, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Sac & Fox Tribe of the Mississippi in Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Sac & Fox Tribe of the Mississippi in Iowa. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy J. Scranton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Sac & Fox Tribe of the Mississippi in Iowa for Public Assistance.

The Sac & Fox Tribe of the Mississippi in Iowa is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–10195 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4424–DR; Docket ID FEMA–2019–0001]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–4424–DR), dated April 8, 2019, and related determinations.

DATES: This amendment was issued April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 8, 2019.

Belmont County for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–10202 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4428-DR; Docket ID FEMA-2019-0001]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA-4428-DR), dated April 17, 2019, and related determinations.

DATES: The declaration was issued April 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 17, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, straight-line winds, flooding, landslides, and mudslides during the period of February 6 to March 10, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Adair, Ballard, Bell, Boyd, Breathitt, Butler, Campbell, Carlisle, Carroll, Carter, Casey, Clay, Crittenden, Cumberland, Edmonson, Elliott, Estill, Floyd, Grant, Greenup, Hancock, Harlan, Henderson, Henry, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Livingston, Madison, Magoffin, Marion, Marshall, Martin, McCracken, McCreary, Metcalfe, Morgan, Owsley, Pendleton, Perry, Pike, Powell, Rockcastle, Russell, Trigg, Union, Washington, Wayne, Webster, Whitley, and Wolfe Counties for Public Assistance.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019-10201 Filed 5-15-19; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4427-DR; Docket ID FEMA-2019-0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-4427-DR), dated April 17, 2019, and related determinations.

DATES: The declaration was issued April 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 17, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, flooding, landslides, and mudslides during the period of February 19 to March 30, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Bedford, Bledsoe, Blount, Campbell, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Decatur, Dekalb, Dickson, Dyer, Fentress, Gibson, Giles, Grainger, Greene, Hamblen, Hamilton, Hancock, Hardin, Hawkins, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lewis, Lincoln, Marion, Marshall, McNairy, Moore, Morgan, Obion, Overton, Perry, Rhea, Roane, Robertson, Scott, Sequatchie, Sevier, Smith, Tipton, Unicoi, Union, Van Buren, Warren, and Wayne Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–10200 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4429–DR; Docket ID FEMA–2019–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4429–DR), dated April 23, 2019, and related determinations.

DATES: This amendment was issued April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2019.

Alcorn, Carroll, Itawamba, Lafayette, Lee, Montgomery, Panola, Prentiss, Quitman, Tallahatchie, Union, Webster, and Yalobusha Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–10203 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4429–DR; Docket ID FEMA–2019–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4429–DR), dated April 23, 2019, and related determinations.

DATES: The declaration was issued April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 23, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42

U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of February 22 to March 29, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Calhoun, Chickasaw, Clay, Grenada, Lowndes, Pontotoc, and Tishomingo Counties for Public Assistance.

All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance
(Presidentially Declared Disasters); 97.039,
Hazard Mitigation Grant.

Pete Gaynor,

*Acting Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2019–10204 Filed 5–15–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORN00300.L63320000.FU0000.
LXSS026H0000.17XL1116AF.HAG 17–0042]

Notice of Intent To Establish Recreation Fees on Public Lands in Clackamas County, OR

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Federal Lands
Recreation Enhancement Act (REA), the
Bureau of Land Management (BLM),
Northwest Oregon District (formerly
Salem District), intends to establish
standard (day-use) and expanded
(overnight/specialized use) amenity fees
at Aquila Vista, Cedar Grove, Marmot,
Sandy Ridge, and Three Bears
Recreation Sites in Clackamas County,
Oregon.

DATES: Comments on the proposed fees
must be received or postmarked by June
17, 2019 and include a legible full name
and address.

ADDRESSES: The business plans and
information concerning the proposed
fees may be reviewed at the Northwest
Oregon District Office, 1717 Fabry Rd.
SE, Salem, Oregon 97306, and online at
[https://www.blm.gov/programs/
recreation/permits-and-fees/business-
plans](https://www.blm.gov/programs/recreation/permits-and-fees/business-plans).

Written comments may be mailed or
delivered to the address listed
previously or emailed to: [blm_or_no_
rec_publiccomments@blm.gov](mailto:blm_or_no_rec_publiccomments@blm.gov) with
“Attn: Dan Davis, Notice of Intent to
Establish Recreation Fees” referenced in
the subject line.

FOR FURTHER INFORMATION CONTACT: Dan
Davis, Outdoor Recreation Planner,
phone: 503–375–5646, email: [blm_or_
no_rec_publiccomments@blm.gov](mailto:blm_or_no_rec_publiccomments@blm.gov).
Contact Dan Davis to have your name
added to the Northwest Oregon
District’s mailing list. Persons who use
a telecommunications device for the
deaf (TDD) may call the Federal Relay
Service (FRS) at 1–800–877–8339 to
contact Mr. Davis during normal
business hours. The FRS is available 24
hours a day, 7 days a week, to leave a
message or question. You will receive a
reply during normal business hours.

SUPPLEMENTARY INFORMATION: The REA
directs the Secretary of the Interior to
publish a 6-month advance notice in the
Federal Register whenever new
recreation fee areas are established. A
RAC must review a new fee prior to a
final decision to implement fee
collection.

The BLM is proposing to establish
recreation fees for standard and

expanded amenities at the Aquila Vista,
Cedar Grove, and Three Bears
Recreation Sites. These sites are located
in the Molalla River-Table Rock Special
Recreation Management Area,
approximately 12 miles southeast of the
city of Molalla, Oregon. The Molalla
River-Table Rock Recreation Area
Management Plan (2011) identified
these recreation sites to be developed in
order to address high levels of
recreational use and minimize impacts
to the riparian area outside of these
recreation sites. The BLM determined
that developing these sites could help
by concentrate visitation and allow for
potential fee revenue to offset
management expenses. The Molalla
River Corridor Business Plan used a
market analysis to determine standard
and expanded amenity fees at these
recreation sites.

The BLM is also proposing to
establish recreation fees for standard
amenities at the Marmot and Sandy
Ridge Recreation Sites. These sites are
included within the larger Sandy River
Basin Integrated Management Plan,
which guides their development. The
market analysis in the Sandy River
Basin Business Plan determined
standard amenity fees at these
recreation sites. The amenities
furnished at both Sandy Ridge and
Marmot Recreation Sites provide
significant opportunities for outdoor
recreation.

The table shows proposed fees and
associated site amenities:

FEE PROPOSALS WITHIN THE BUREAU OF LAND MANAGEMENT NORTHWEST OREGON DISTRICT’S SALEM OFFICE NORTHWEST OREGON RAC

Recreation site or area name	Proposed fees per day/night	Site amenities
Molalla River Corridor: Aquila Vista, Cedar Grove and Three Bears Campgrounds		
Individual Tent Campsite	\$15	Walk-in tent campsites with fire ring and picnic table, site access road, parking, vault toilets, trash receptacle, camp host site, potable water, information kiosk, access to Molalla River and non-motorized multi-use trail system.
Double Tent Campsite	\$30	
Extra Camping Vehicle	\$5	
Day-Use Vehicles (in campgrounds, up to 9 people).	\$5	
Group Campsite	\$50 (up to 20 people) \$2.50 for each additional person.	Private group campsite with fire ring, picnic table and access road, large parking area, gazebo shelter with picnic tables, vault toilet, trash receptacle.
Sandy River Basin: Marmot Recreation Site and Sandy Ridge Day-Use Trailhead		
Day-Use Vehicles (up to 9 people)	\$5	Site access road and parking, picnic tables, vault toilet, trash receptacle, host site, picnic table, interpretive kiosk, access to non-motorized trails.
Day-Use Van (10 to 20 passengers) ..	\$10.	
Day-Use Bus (20 plus passengers)	\$20.	

The BLM will publish the business plans online at <https://www.blm.gov/programs/recreation/permits-and-fees/business-plans>. The plans outline the operational goals of the area, the purpose of the fee program, and guide

expenditures. The plans also provide the basis for the fees by outlining a comparative market analysis of public recreation sites.

These recreation sites would become new fee sites with the previously

mentioned fees, pending the review and recommendation for approval by the Northwest Oregon RAC. The BLM would begin charging fees no sooner than 6 months after publishing this notice in the **Federal Register** and after

the close of public comments. Future adjustments in the fee amount would be made in accordance with the plan, including a public comment period, and through consultation with the Northwest Oregon RAC. Fee amounts will be posted onsite and online once established.

The BLM has found that recreation fee proposals are of a procedural nature and do not constitute a major Federal action, and are therefore excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(C), pursuant to 43 CFR 46.210(i). In addition, the fee proposals do not present any of the 12 extraordinary circumstances related to categorical exclusions listed at 43 CFR 46.215.

The BLM Northwest Oregon District welcomes public comment on this proposal. Comments received after the close of the comment period may not be considered or included in the administrative record for the proposed fees. Effective no sooner than 6 months after publication of this notice, and contingent upon final review and recommendation for approval by the Northwest Oregon Resource Advisory Council (RAC), the BLM will initiate fee collection at the above-mentioned recreation sites, unless the BLM publishes a **Federal Register** Notice to the contrary.

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.

(Authority: 16 U.S.C. 6803(b) and 43 CFR 2932)

David O. Howell,

Northwest Oregon District Manager.

[FR Doc. 2019–10150 Filed 5–15–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–27870;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before May 4, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by May 31, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 4, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

CALIFORNIA

Santa Clara County

Fairglens Additions (Unit 1, Unit 2, and Unit 3), (Housing Tracts of Joseph Eichler in San Jose, 1952–1963 MPS), Booksin, Fairvalley, Fairhill, Fairwood, Fairlawn, Fairorchard, Fairdell, and Andalusia Aves., Fairlawn, Fairvalley, Fair oak, and Fairgrove Courts, and Fairglens Dr., San Jose, MP100004036

DISTRICT OF COLUMBIA

District of Columbia

Hardy, Rose Lee, School, (Public School Buildings of Washington, DC MPS), 1550 Foxhall Rd. NW, Washington, MP100004071

Potomac Electric Power Company Substation No. 13, 1001 Harvard St. NW, Washington, SG100004072

Potomac Electric Power Company Substation No. 25, 2119 Champlain St. NW, Washington, SG100004073

INDIANA

Dearborn County

ELIZABETH LEA (Towboat), 11042 St. Rd. 56, Lighthouse Point Yacht Club, Aurora vicinity, SG100004044

Elkhart County

Log Cabin Inn Tourist Camp, 68306 US 33, Benton, SG100004041

Hamilton County

Walden, Micajah, House, 3909 E 276th St., Atlanta vicinity, SG100004042

Henry County

Knightstown, Old, and Glen Cove Cemeteries, 8875 S State Rd. 109, Knightstown, SG100004046

Lake County

Gary Union Station, 251 N Broadway, Gary, SG100004040
Griffith State Bank, 101 E Main St., Griffith, SG100004050

Marion County

Riverside Drive Historic District, Bounded by W 29th St., N Harding St., W 21st St., and E Riverside Dr., Indianapolis vicinity, SG100004043

Owen County

Vandalia Methodist Episcopal Church and Vandalia School, (Indiana's Public Common and High Schools MPS), 5434 and 5465 Vandalia Rd., Vandalia, MP100004045

Vigo County

Terre Haute YMCA Building, 200 S 6th St., Terre Haute, SG100004047

Wayne County

Eliason Farm, 1594 N Eliason Rd., Centerville vicinity, SG100004048

Wells County

Bluffton Commercial Historic District, Roughly bounded by Wabash, Scott, Elm, and Marion Sts., Bluffton, SG100004049

MAINE

Cumberland County

Merriconeag Grange No. 425, 529 Harpswell Neck Rd., Harpswell, SG100004068
Walking Man Sign, 10 Hardy Rd., Westbrook, SG100004069

MASSACHUSETTS

Middlesex County

Keyes, Jonathon, Sr. House, 16 Frances Hill Rd., Westford, SG100004051

Plymouth County

New England Telephone and Telegraph Engineering Office, 47 Pleasant St., Brockton, SG100004052

MINNESOTA

Pipestone County

Jasper School Building, 100 N Hill Ave., Jasper, SG100004075

Rice County

Morristown Feed Mill, 205 Bloomer St. E, Morristown, SG100004074

MISSOURI

Jackson County

Moline Plow Company Building, (Railroad Related Historic Commercial and Industrial

Resources in Kansas City, MO MPS), 1015 Mulberry St., Kansas City, MP100004065

Randolph County

Moberly Commercial Historic District (Boundary Increase, 106–316 N Clark, 101–120 E Coates, 101–549–W Coates, 110–214 N Fifth, 1011–101 S Fourth, 100 Hagood, 100–199 Johnson, 244 Moulton, 101–541 W Ree, 101–514 W Rollins, 100–101 N Sturgeon, 105–213 N Williams, Moberly, BC100004064

St. Clair County

Appleton City Downtown Commercial District, 100–200 E 4th St., 100–131 W 4th St., 201–306 N Walnut St., Appleton City, SG100004061

St. Louis Independent City

IBEW Building, 5850 Elizabeth Ave., St. Louis, SG100004062
St. Louis Globe-Democrat Building, 900 N Tucker Blvd., St. Louis, SG100004066
Trinity Episcopal Church, 600 N Euclid Ave., St. Louis, SG100004067

NEW JERSEY

Monmouth County

Players Boat Club, 925 River Rd., Fair Haven, SG100004058

NEW MEXICO

Bernalillo County

Parkland Hills Historic District, Roughly bounded by Zuni Rd., Garfield and Smith Aves, Valverde Dr., and Carlisle Blvd., Albuquerque, SG100004034

Santa Fe County

John Gaw Meem Architects Office, (Buildings Designed by John Gaw Meem MPS), 1101 Camino De Cruz Blanca, Santa Fe, MP100004030
Agua Fria Schoolhouse Site, Address Restricted, Santa Fe vicinity, SG100004033

OHIO

Ashland County

Ashland County Children's Home, 1260 Center St., Ashland, SG100004059

Ashtabula County

Ashtabula Post Office and Federal Building, 4400 Main Ave., Ashtabula, SG100004053

Franklin County

Open Air School, 2571 Neil Ave., Columbus, SG100004054
Uptown Westerville Historic District, State St., Bet. Home St. and Dill and Starrock Alleys, Westerville, SG100004055
L. Hoster Brewing Company, 477 Front St., Columbus, SG100004060

Summit County

Sisler, Dr. Louis, House, 675 N Portage Path, Akron, SG100004056

WASHINGTON

Kitsap County

Doe-Kag-Wats, 10435 NE Shore Dr., Kingston vicinity, SG100004076

WISCONSIN

Jefferson County

South Main Street Residential Historic District, 226–275 S Main St., 307–354 S Main St., Lake Mills, SG100004026
Mulberry Street Residential Historic District, 205 Oak St., 310–425 Mulberry St., 512 Mulberry St., Lake Mills, SG100004027

Sheboygan County

I.A. JOHNSON Shipwreck (Scow Schooner), (Great Lakes Shipwreck Sites of Wisconsin MPS), Address Restricted, Mosel vicinity, MP100004028

A request for removal has been made for the following resource:

ARIZONA

Maricopa County

Kaler House, 301 W Frier Dr., Phoenix, OT92001686

Additional documentation has been received for the following resources:

ARIZONA

Yavapai County

Clarkdale Historic District, Roughly along Main St., roughly bounded by Verde R. including industrial smelter site., Clarkdale, AD97001586

MISSOURI

Randolph County

Moberly Commercial Historic District, Roughly bounded by W. Coates, W. Rollins, N. Clark, & Johnson Sts., Moberly, AD12000592

OHIO

Lucas County

Fort Industry Square, Bounded by Summit, Monroe, and Water Sts. and Jefferson Ave., Toledo, AD73001501

WASHINGTON

Kitsap County

Old-Man-House Site (45KP2), Address Restricted, Suquamish vicinity, AD89002299

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

ALASKA

Denali Borough

Mount McKinley National Park Road Historic District, Mile 237.3 George Parks Hwy., Denali Park vicinity, SG100004070

MONTANA

Jefferson County

Homestake Airway Beacon, (Sentinels of the Airways: Montana's Airway Beacon System, 1934–1979 MPS), Address Restricted, Butte vicinity, MP100004037

Authority: Section 60.13 of 36 CFR part 60.

Dated: May 6, 2019.

Kathryn G. Smith,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2019–10168 Filed 5–15–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04084000, XXXR4081X1, RN.20350010.REG0000]

Colorado River Basin Salinity Control Advisory Council Notice of Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation is publishing this notice to announce that a Federal Advisory Committee meeting of the Colorado River Basin Salinity Control Council (Council) will take place.

DATES: The Council will convene the meeting on Wednesday, June 5, 2019, at 1:00 p.m. and adjourn at approximately 5:00 p.m. The Council will reconvene the meeting on Thursday, June 6, 2019, at 8:30 a.m. and adjourn the meeting at approximately 11:00 a.m.

ADDRESSES: The meeting will be held at the Colorado State Capitol Building, Old State Library, Room 271, 200 East Colfax Avenue, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; email at kjacobson@usbr.gov; facsimile (801) 524–3847.

SUPPLEMENTARY INFORMATION: The meeting of the Council is being held under the provisions of the Federal Advisory Committee Act of 1972. The Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act.

Purpose of the Meeting: The purpose of the meeting is to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110–246, which amended the Act; (2) responses to the Advisory Council Report; and (3) other items within the jurisdiction of the Council.

Agenda: Council members will be updated and briefed on the status of (1) the Bureau of Reclamation's Basinwide

and Basin States salinity control programs, (2) the Bureau of Land Management's and Natural Resources Conservation Service's salinity control programs, and (3) other salinity control activities occurring in the Colorado River Basin.

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. Individuals requiring special accommodations to access the public meeting should contact Mr. Kib Jacobson by email at kjacobson@usbr.gov, or by telephone at (801) 524-3753, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To allow full consideration of information by Council members, written notice must be provided to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138-1147; email at kjacobson@usbr.gov; facsimile (801) 524-3847; at least five (5) business days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

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.

Dated: April 1, 2019.

Brent Rhees,

Regional Director, Upper Colorado Region.

[FR Doc. 2019-10138 Filed 5-15-19; 8:45 am]

BILLING CODE 4332-90-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-1155]

Certain Luxury Vinyl Tile and Components Thereof; 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 March 25, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Mohawk Industries, Inc., of Calhoun, Georgia; Flooring Industries Ltd. Sarl of Luxembourg; and IVC US Inc. of Dalton, Georgia. Supplements to the Complaint were filed on April 10, 15 and 29, 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 luxury vinyl tile and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,200,460 (“the ‘460 patent’”); U.S. Patent No. 10,208,490 (“the ‘490 patent’”); and U.S. Patent No. 10,233,655 (“the ‘655 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 complainants request that the Commission institute an investigation and, after the investigation, issue a general 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, Office of Unfair Import Investigations, 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, as supplemented, the U.S. International Trade Commission, on May 9, 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 7, 8, 13, 15-17, 20-23, and 30 of the '460 patent; claims 1-21 of the '490 patent; and claims 1-27 of the '655 patent, and whether an industry in the United States exists or is 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 “interlocking luxury vinyl tile floor panels and components thereof”;

(3) 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 are:

Mohawk Industries, Inc., 160 South Industrial Blvd., Calhoun, GA 30701
Flooring Industries Ltd. Sarl, 10B rue des Merovingiens, Bertrange, 8070, Luxembourg
IVC US Inc., 101 IVC Drive, Dalton, GA 30721

(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:

ABK Trading Corp., 925 S. Mason Road, Suite 168, Katy, TX 77450, Telephone: (713) 973-7800
Anhui Hanhua Building Materials Co., Ltd., No. 16 West Jinqiao Road, Langxi Economic Development Zone, Xuancheng, Anhui 242000, China
Aspecta North America, LLC, 15 Oakwood Avenue, Norwalk, CT 06850, Telephone: (855) 400-7732
Aurora Flooring LLC, 1920 Shiloh Road NW, Bldg. 5, Kennesaw, GA 30144, Telephone: (678) 460-0064
Benchwick Construction Products Ltd., No. 199 Gaojia Road, Wujin District, Changzhou, Jiangsu 213000, China

Changzhou Jinuo Decorative Material Co., Ltd, No. 4 Cuili Road, Henglin, Changzhou, Jiangsu 213103, China

Changzhou Marco Merit International Solutions Co., Room 1405, Haoyuan Building, No. 266 Tongjiang Middle Road, Xinbei, Changzhou, Jiangsu 213022, China

Changzhou Runchang Wood Co., Ltd., 5 Bangshang Road, Cuiqiao North Industrial Zone, Henglin, Changzhou, Jiangsu 213103, China

Christina & Son Inc., 4359 Temple City Blvd., Temple City, CA 91780, Telephone: (626) 448-4088

Chungstine Inc. d/b/a Expert Hardwood Flooring, 451 Kettering Drive, Ontario, CA 91761

Davati Group LLC, 6000 S Congress Ave., Suite 101, Austin, TX 78745, Telephone: (512) 371-6096

DeSoto Sales, Inc., 20945 Osborne St., Canoga Park, CA 91304, Telephone: (800) 826-9779

Global Wood Inc., 1180 Centre Drive, Suite A, Walnut, CA 91789, Telephone: (909) 598-8538

Go-Higher Trading (Jiangsu) Co., Ltd., No. 5-1001 Changfa Commercial Plaza, Xinbei, Changzhou, Jiangsu 213000, China

Golden Tree Import & Export Inc., 4359 Temple City Blvd., Temple City, CA 91780, Telephone: (626) 448-4489

Halstead New England Corp., 15 Oakwood Avenue, Norwalk, CT 06850, Telephone: (202) 299-3100

Hangzhou Kingdom Import & Export Trading Co. Ltd., 10F, Suite D, Building 8, New Territory Westport, No. 206 Zhenhua Road, Hangzhou 310030, China

IN.id Corp., 23545 Palomino Drive #135, Diamond Bar, CA 91765

JC Int'l Trading, Inc., 1140 Centre Dr., Unit W, City of Industry, CA 91789, Telephone: (909) 594-3333

Jiangsu Divine Building Technology Development Co. Ltd., No. 27 CuiRong Road, Shuangrong, Henglin, Wujin, Changzhou Jiangsu 213103, China

Jiangsu Lejia Plastic Co. Ltd., Shuang Rong, Henglin, Changzhou, Jiangsu 213103, China

JiangSu Licheer Wood Co., Ltd., 10 Ying Bing Road, Cuibei, Henglin, Wujin, Changzhou, Jiangsu 213103, China

JiangSu TongSheng Decorative Materials Co., Ltd., No. 2 Chuangsheng Road, Luoyang Industrial Zone, Wujin, Changzhou, Jiangsu 213000, China

Jkgy Inc. d/b/a Nextar Trading, 220 Mason Way, City of Industry, CA 91745-2329, Telephone: (626) 581-4790

KJ Carpet Wholesale, Inc., 1614 South Reservoir Street, Pomona, CA 91766, Telephone: (909) 455-0190

Maxwell Flooring Distribution LLC, 1075 West Sam Houston Pkwy North, Suite 216, Houston, TX 77043, Telephone: (713) 973-2288

Metroflor Corp., 15 Oakwood Avenue, Norwalk, CT 06850, Telephone: (866) 882-4408

Mountain High Corp., 2537 Durfee Ave., El Monte, CA 91732, Telephone: (626) 288-7333

Mr. Hardwood Inc., 4260 Industrial Center Ln NW #100, Acworth, GA 30101, Telephone: (678) 935-6677

National Coverings, LLC, 2952 NW 60th St., Ft. Lauderdale, FL 33309, Telephone: (800) 498-1750

Nextar Wholesale, 1201 S. Jellick Avenue, City of Industry, CA 91745

Northann Distribution Center Inc., 7495 Resee Road, Sacramento, CA 95828, Telephone: (916) 682-7476

Pentamax Inc., 2410 South Sierra Drive, Compton, CA 90220

RBT Industries LLC d/b/a Hardwood Bargains, 1340 Airport Commerce Drive, Suite 425, Austin, TX 78741, Telephone: (844) 746-0744

RC Vinyl Inc., 1140 Centre Dr., Unit W, City of Industry, CA 91789, Telephone: (909) 594-3333

Royal Family Inc., 4359 Temple City Blvd., Temple City, CA 91780, Telephone: (626) 448-4088

Sam Houston Hardwood Inc., 1075 W Sam Houston Pkwy. North, Suite 204, Houston, TX 77043

Zhejiang Changxing Senda Bamboo and Wood Products Co. Ltd., Bai Xian Industrial Park, Changxing, Huzhou 313100 Zhejiang, China

Zhangjiagang Elegant Home-Tech Co. Ltd, Hexing Civil Industrial Zone, Zhangjiagang, Jiangsu 215626, China

Zhangjiagang Elegant Plastics Co. Ltd., Hexing Civil Industrial Zone, Zhangjiagang, Jiangsu 215616, China

Zhangjiagang Yihua Plastics Co., Ltd, 88 Fuxing Road, Zhangjiagang, Jiangsu 215600, China

Zhangjiagang Yihua Rundong New Material Co. Ltd, Yangshe Town Industry Development Area, Zhangjiagang, Jiangsu 215600, China

Zhejiang Kimay Building Material Technology Co., Ltd., No. 380 Haifeng Road, Building 3, Haichang, Haining, Jiaxing, Zhejiang 314300, China

Zhejiang Kingdom Flooring Plastic Co., Ltd., 38 Desheng Road, Heshan, Tongxiang, Zhejiang 314512, China

Zhejiang Walrus New Material Co., Ltd., No. 380 Haifeng Road, Building 3, Haichang, Haining, Jiaxing, Zhejiang 314300, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) 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: May 10, 2019.

Katherine Hiner,

Secretary to the Commission.

[FR Doc. 2019-10111 Filed 5-15-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1086]

Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof; Notice of a Commission Determination Not To Review a Remand Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, Bonding, and the Public Interest; and Extension of the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has determined not to review a remand initial determination (“RID”) (Order No. 16) of the chief administrative law judge (“ALJ”), finding a violation of section 337 with respect to U.S. Patent No. 8,544,161 (“the ‘161 patent”). The Commission is requesting written submissions on remedy, bonding, and the public interest and has extended the target date for completion of the investigation to June 13, 2019.

FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 28, 2017, based on a complaint filed on behalf of National Products Inc. (“NPI”) of Seattle, Washington. 82 FR 56266–67. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of the ‘161 patent, U.S. Patent Nos. D703,657; 8,186,636; D571,278 (“the D’278 patent”); D574,204; and 9,568,148; and U.S. Trademark Registration No. 4,254,086. The Commission’s notice of investigation named ten respondents, including Shenzhen Chengshuo Technology Co., Ltd., d/b/a WUPP (“WUPP”) of Zhejiang, China; Foshan City Qishi Sporting Goods, Technology Co., Ltd., Guangzhou Kean Products Co., Ltd., Gangzhou Kaicheng Metal Produce Co., Shenzhen Smilin Electronic Technology, Co., Ltd., and Shenzhen New Dream Intelligent Plastic, Co., Ltd., all of Guangdong, China; Chengdu MWUPP Technology Co., Ltd. of Sichuan Province, China; and Shenzhen Yingxue Technology Co., Ltd., d/b/a Yingxue Tech. (“Yingxue Technology”), Shenzhen Shunsihang Technology Co.,

Ltd., d/b/a BlueFire (“BlueFire”), and Prolech Electronics Limited, all of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. All respondents in the investigation have been found in default, and the D’278 patent has been terminated from the investigation. See Comm’n Notice (June 5, 2018); Comm’n Notice (July 18, 2018).

On November 28, 2018, the ALJ issued an ID granting in part NPI’s motion (as supplemented on July 10, July 19, and September 14, 2018) for summary determination of violation of section 337 by the defaulting respondents and request for issuance of a general exclusion order (“GEO”). Regarding the ‘161 patent, NPI alleged induced and contributory infringement of claim 1 of this patent with respect to the accused WUPP X–Grip Mount. The ALJ found that NPI did not establish direct infringement of this claim by substantial, reliable, and probative evidence.

On March 18, 2019, the Commission issued notice of its determination: (1) To review the ID’s finding that direct infringement was not established with respect to claim 1 of the ‘161 patent; and (2) on review, to reverse this finding and remand to the ALJ the issue of whether NPI has established induced and contributory infringement of this claim. The Commission determined not to review the remainder of the ID.

On April 16, 2019, the ALJ issued an RID finding a violation of section 337 with respect to claim 1 of the ‘161 patent. Specifically, the ALJ found that NPI has shown induced and contributory infringement of this claim by respondents WUPP and Yingxue Technology by substantial, reliable, and probative evidence. No party petitioned for review of the subject RID.

Having reviewed the record, the Commission has determined not to review the RID and has extended the target date for completion of the investigation to June 13, 2019.

As noted above, ten respondents have been found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to issue relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. In its motion for summary determination, NPI requested a GEO.

In connection with the final disposition of this investigation, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for

consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm’n Op. at 7–10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant and OUII are also requested to submit proposed remedial orders for the Commission’s consideration. Complainant is also requested to state the date that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on May 17, 2019. Reply submissions must be filed no later than the close of business on May 24, 2019. No further submissions on these

issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1086") in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,¹ solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 10, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019-10112 Filed 5-15-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-1156]

Certain Led Packages Containing PFS Phosphor and Products Containing 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 April 11, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Current Lighting Solutions, LLC of East Cleveland, Ohio; General Electric Co., of Boston, Massachusetts; and Consumer Lighting (U.S.), LLC d/b/a GE Lighting of East Cleveland Ohio. A supplement was filed on April 30, 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 LED packages containing PFS phosphor and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,497,973 ("the '973 patent") and U.S. Patent No. 9,680,067 ("the '067 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request 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: Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205-1802.

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, as supplemented, the U.S. International Trade Commission, on May 10, 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 1-4, 6-10, and 12-22 of the '973 patent and claims 1, 3, 4, 7, 11, and 12 of the '067 patent; and whether an industry in the United States exists 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 "LED packages, which are housings that include an LED chip and one or more phosphors, comprised of fluoride-based phosphors activated with manganese, and products containing the same";

(3) 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 are:

Current Lighting Solutions, LLC, 1975 Noble Road, Building 338, Nela Park, East Cleveland, OH 44112.

General Electric Co., 41 Farnsworth Street, Boston, MA 02210.

Consumer Lighting (U.S.), LLC, d/b/a GE Lighting, 1975 Noble Road, Building 338, East Cleveland, OH 44112.

(b) The respondents are the following entities alleged to be in violation of

¹ All contract personnel will sign appropriate nondisclosure agreements.

section 337, and are the parties upon which the complaint is to be served:

Cree, Inc., 4600 Silicon Drive,
Durham, NC 27703.

Cree Hong Kong Ltd., 18 Science Park
East Avenue, Hong Kong Science Park,,
Shatin, New Territories,, Hong Kong.

Cree Huizhou Solid State Lighting Co.
Ltd., No. 32 Zhong Kai High, Tech
Development Park, 830000, Huizhou,
Guangdong 516006, China.

(4) For the investigation so instituted,
the Chief Administrative Law Judge,
U.S. International Trade Commission,
shall designate the presiding
Administrative Law Judge.

The Office of Unfair Import
Investigations will not participate as a
party in this investigation.

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: May 10, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019-10196 Filed 5-15-19; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Limited Permittee Transaction Report—ATF F 5400.4

AGENCY: Bureau of Alcohol, Tobacco,
Firearms and Explosives, Department of
Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice
(DOJ), Bureau of Alcohol, Tobacco,
Firearms and Explosives (ATF), will
submit the following information
collection request to the Office of
Management and Budget (OMB) for
review and approval in accordance with
the Paperwork Reduction Act of 1995.

DATES: The proposed information
collection was previously published in
the **Federal Register**, on March 12,
2019, allowing for a 60-day comment
period. Comments are encouraged and
will be accepted for an additional 30
days until June 17, 2019.

FOR FURTHER INFORMATION CONTACT: If
you have additional comments,
particularly with respect to the
estimated public burden or associated
response time, have suggestions, need a
copy of the proposed information
collection instrument with instructions,
or desire any other additional
information, please contact: Anita
Scheddel, Program Analyst, Explosives
Industry Programs Branch, either by
mail at 99 New York Ave. NE,
Washington, DC 20226, by email at
eipb-informationcollection@atf.gov, or
by telephone at 202-648-7158. Written
comments and/or suggestions can also
be directed to the Office of Management
and Budget, Office of Information and
Regulatory Affairs, Attention
Department of Justice Desk Officer,
Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written
comments and suggestions from the
public and affected agencies concerning
the proposed collection of information
are encouraged. Your comments should
address one or more of the following
four points:

—Evaluate whether the proposed
collection of information is necessary
for the proper performance of the
functions of the agency, including
whether the information will have
practical utility;

—Evaluate the accuracy of the agency's
estimate of the burden of the
proposed collection of information,
including the validity of the
methodology and assumptions used;
—Evaluate whether and if so how the
quality, utility, and clarity of the
information to be collected can be
enhanced; and
—Minimize the burden of the collection
of information on those who are to
respond, including through the use of
appropriate automated, electronic,
mechanical, or other technological
collection techniques or other forms
of information technology, e.g.,
permitting electronic submission of
responses.

Overview of This Information Collection

(1) *Type of Information Collection:*
Revision of a currently approved
collection.

(2) *The Title of the Form/Collection:*
Limited Permittee Transaction Report.

(3) *The agency form number, if any,
and the applicable component of the
Department sponsoring the collection:*
Form number: ATF F 5400.4.

Component: Bureau of Alcohol,
Tobacco, Firearms and Explosives, U.S.
Department of Justice.

(4) *Affected public who will be asked
or required to respond, as well as a brief
abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: The purpose of this
collection is to enable ATF to determine
if limited permittees have exceeded the
number of receipts of explosives
materials they are allowed, as well as
the eligibility of such persons to
purchase explosive materials.

(5) *An estimate of the total number of
respondents and the amount of time
estimated for an average respondent to
respond:* An estimated 125 respondents
will utilize the form approximately six
(6) times annually, and it will take each
respondent approximately 20 minutes to
complete each 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
250 hours, which is equal to 125 (# of
respondents) * 6 (number of responses
per respondent) * .333333 (20 mins).

(7) *An Explanation of the Change in
Estimates:* The public cost burden for
this information collection increased by
a total \$45 from \$368 since the last
renewal in 2016 to \$413 in 2019, due to
a postage rate from 49 cents to 55 cents.

*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: May 10, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-10093 Filed 5-15-19; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0081]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Appeals of Background Checks

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection was previously published in the **Federal Register**, on March 12, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until June 17, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact: Shawn Stevens, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at Shawn.Stevens@atf.gov, or by telephone at 304-616-4400. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning

the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Appeals of Background Checks.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: None.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: 18 U.S.C. Section 843(h)

requires the Attorney General to conduct background checks on the persons whose names and descriptions accompany the Federal explosives license or permit applications. This section further obligates the Attorney General to provide notification of disability to anyone who is determined to be so under Section 842(i) of this Chapter, as well as information about how such individuals can apply for relief from a disability determination. 27 CFR, Section 555.33 also states that anyone who wishes to challenge a disability determination may direct their appeal to the Director.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 500 respondents

will respond once to this information collection, and it will take each respondent approximately 2 hours to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,000 hours, which is equal to 500 (# of respondents) * 1 (# of responses per respondents) * 2 (# of hours to complete each response).

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: May 10, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-10092 Filed 5-15-19; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0075]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Transactions Among Licensees/Permittees, Limited

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection was previously published in the **Federal Register**, on March 12, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until June 17, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact: Anita

Scheddel, Program Analyst, ATF Explosives Industry Programs Branch, either by mail at 99 New York Ave. NE, Washington, DC 20226, or by email at eipb-informationcollection@atf.gov, or by telephone at 202-648-7158. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Transactions Among Licensees/ Permittees, Limited.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: None.

Abstract: Specific requirements for licensees and permittees regarding limited explosive permits are outlined

in this information collection. This information will be used by ATF to implement the provisions of the Safe Explosives Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 125 respondents will utilize this information collection, and it will take each respondent approximately 30 minutes to provide their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 63 hours, which is equal to 125 (# of respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 10, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-10091 Filed 5-15-19; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On May 10, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States v. Tilden Mining Company L.C.*, Civil Action No. 19-095.

The United States filed a Complaint in this lawsuit under the Clean Air Act (CAA), naming Tilden Mining Company L.C. as the defendant. The Complaint seeks injunctive relief and civil penalties for violations of the environmental regulations that govern taconite mines and processing plants and the emission of particulate matter from certain sources at defendant's taconite processing plant in Ishpeming, Marquette County, Michigan. Under the proposed consent decree, Tilden Mining Company agrees to implement procedures to improve future compliance with the CAA and State regulations, and pay \$125,000 in civil penalties. In return, the United States agrees not to sue the defendant under section 113 of the CAA related to its past violations.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Tilden Mining Company L.C.*, D.J. Ref. No. 90-5-2-1-11172. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$14.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 2019-10160 Filed 5-15-19; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Survey of Law Enforcement Personnel in Schools (SLEPS)

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 (BJS), 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** on Thursday, February 21, 2019, allowing a 60-day comment period. Following publication of the 60-day notice, BJS received one request for the survey instruments and comments on survey content from three organizations. In response, BJS made modest revisions to several existing questions and response options, and also added some new questions to better capture information on the training and activities of law enforcement officers working in schools. BJS does not expect these changes to impact the estimated respondent burden.

DATES: Comments are encouraged and will be accepted for 30 days until June 17, 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 Elizabeth Davis, Statistician, Law Enforcement Statistics Unit, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: Elizabeth.Davis@usdoj.gov; telephone: 202–305–2667). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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:* New collection.

(2) *The Title of the Form/Collection:* Survey of Law Enforcement Personnel in Schools (SLEPS)

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the agency survey is SLEPS–1; the form number for the officer survey is SLEPS–2. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be law enforcement agencies (LEAs), including school-based police; municipal, county, and regional police; sheriff's offices; and school resource officers (SROs) employed by these LEAs.

SLEPS will examine law enforcement involvement in ensuring safety in schools by conducting both an agency-level and an officer-level survey. The agency-level survey asks about departmental policies and agreements with schools; funding sources and the number/type of schools served; and SRO recruitment, training, and supervision. The officer-level survey asks SROs about their experience as a law enforcement officer, training, activities in schools, and characteristics of their primary assignment. SLEPS will provide key national statistics to fill the knowledge gap surrounding law enforcement in schools and further the school safety agenda.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An agency-level survey will be sent to approximately 1,982 LEA respondents. The expected burden placed on these respondents is about 30 minutes per respondent. These respondents will also receive an officer roster form which has an expected burden of about 10 minutes per respondent. It is expected that approximately 1,367 agencies will complete the roster form. A point of contact (POC) at these 1,367 agencies will be asked to distribute an officer-level survey to approximately 4,137 school resource officers. The expected burden is about 20 minutes per POC to distribute survey materials and about 30

minutes per officer to complete the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 3,743 burden hours.

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: May 13, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–10137 Filed 5–15–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period for Consent Decree Under the Clean Air Act

On February 8, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Alabama in the lawsuit entitled *United States et al. v. Drummond Company, Inc. d/b/a ABC Coke (Drummond)*, Civil Action No. 2:19–cv–00240–AKK. The United States is joined in this matter by its co-plaintiff the Jefferson County Board of Health (JCBH). At the request of members of the public, DOJ is extending the public comment period for an additional 30 days.

This case relates to alleged releases of benzene from Drummond's coke by-product recovery plant in Tarrant, Alabama (Facility). The case involves claims for civil penalties and injunctive relief under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and its implementing regulations known as National Emission Standards for Hazardous Air Pollutants (NESHAPs), including 40 CFR part 61, subpart L (Benzene Emissions from Coke By-product Recovery Plants), Subpart V (Equipment Leaks and Fugitive Emissions), and Subpart FF (Benzene Waste Operations), as well as related claims under laws promulgated by the Jefferson County Board of Health. The settlement resolves the alleged claims by requiring Drummond to, among other things: (1) Pay a civil penalty of \$775,000 for the past alleged violations to be split equally between the United States and JCBH; (2) undertake fixes to the Facility to address the alleged violations; (3) implement a leak detection and repair program to ensure compliance and reduce potential

future fugitive benzene emissions; and (4) implement a supplemental environmental project of two years of semi-annual use of an infrared camera as part of leak detection efforts at a cost of \$16,000.

Notice of the lodging of the decree was originally published in the **Federal Register** on February 14, 2019. See 84 FR 4104 (February 14, 2019). The publication of the original notice opened a thirty (30) day period for public comment on the Decree. The public comment period was extended until May 17, 2019. 84 FR 9,560 (March 15, 2019); 84 FR 16,038 (April 17, 2019). The publication of the present notice extends the period for public comment on the Decree to June 17, 2019.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al. v. Drummond Company, Inc. d/b/a ABC Coke*, D.J. Ref. No. 90–5–2–1–10717. All comments must be submitted no later than May 17, 2019. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov</i> .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$10.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–10106 Filed 5–15–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On May 10, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States v. Empire Iron Mining Partnership*, Civil Action No. 19–096.

The United States filed a Complaint in this lawsuit under the Clean Air Act (CAA), naming Empire Iron Mining Partnership as the defendant. The Complaint seeks injunctive relief and civil penalties for violations of the environmental regulations that govern taconite mines and processing plants and the emission of particulate matter from certain sources at defendant's taconite processing plant in Palmer, Marquette County, Michigan. Under the proposed Consent Decree, Empire Iron Mining Partnership agrees to implement procedures to improve future compliance with the CAA and State regulations, and pay \$75,000 in civil penalties. In return, the United States agrees not to sue the defendant under section 113 of the CAA related to its past violations.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Empire Iron Mining Partnership*, D.J. Ref. No. 90–5–2–1–11180. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov</i> .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$6.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–10159 Filed 5–15–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. The meeting will be open to the public, with one portion closed to the public.

Name of the Committee: NIC Advisory Board.

General Function of the Committee:

To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

Date and Time: 8:00 a.m.–4:30 p.m. on Thursday, June 20, 2019; 8:00 a.m.–11:00 a.m. on Friday, June 21, 2019.

Location: 320 First Street NW, 6th Floor, Washington, DC 20534, (202) 514–4202.

Contact Person: Shaina Vanek, Acting Director, National Institute of Corrections, 320 First Street NW, Room 5002, Washington, DC 20534. To contact Ms. Vanek, please call (202) 514–4202.

Agenda: On Thursday, June 20, 2019, the Advisory Board will discuss/address the following topics: (1) Agency Report from the NIC Acting Director, (2) briefings from NIC Division Chiefs, (3) agency updates on strategic planning implementation activity, and (4) updates from partner agencies and associations. On Friday, June 21, 2019, the Advisory Board will discuss information related to NIC's personnel and applicants for NIC-related funding.

Procedure: On June 20, 2019, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 10, 2019. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:45 a.m. and 3:45 p.m. and 4:15 p.m. Time allotted for each

presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 10, 2019.

Closed Committee Deliberations: On June 21, 2019, between 8:00 a.m. and 11:00 a.m., the meeting will be closed to permit discussion of (1) information that relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c) (2)), and (2) proprietary information related to Federal funding applications under Public Law 93–415, chapter 315, § 4352. The Advisory Board will discuss information related to NIC's personnel and existing/potential applicants for NIC-related funding in order to provide program prioritization guidance to the agency.

General Information: NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shaina Vanek at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Shaina Vanek,

Acting Director, National Institute of Corrections.

[FR Doc. 2019–10132 Filed 5–15–19; 8:45 am]

BILLING CODE 4410–36–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

39th Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Museum and Library Services Board will meet to advise the Director of the Institute of Museum and Library Services (IMLS) with respect to duties, powers, and authority of IMLS relating to museum, library, and information services, as

well as coordination of activities for the improvement of these services.

Dates and Time: The meeting will be held on June 12, 2019, from 9:00 a.m. until adjourned.

Place: The meeting will be held at 955 L'Enfant Plaza North SW, first floor conference room, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Katherine Maas, Project Specialist and Alt. Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4798; kmaas@imls.gov (<mailto:kmaas@imls.gov>).

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is meeting pursuant to the National Museum and Library Service Act, 20 U.S.C. 9105a, and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The 39th Meeting of the National Museum and Library Services Board will be held on June 12, 2019. A plenary session (open to the public) will convene at 9:00 a.m., followed by an Executive Session (closed to the public) discussion of specific agreements and programs before the Board.

The agency for the plenary session of the National Museum and Library Services Board will be as follows:

- I. Welcome and Director's Report
- II. Approval of Minutes
- III. Office of Museum Services Report
- IV. Office of Library Services Report
- V. Office of Digital and Information Strategy Report
- VI. Financial and Operations Report
- VII. Legislative and Policy Report

As identified above, portions of the meeting of the National Museum and Library Services Board will be closed to the public pursuant to subsections (c)(4), (c)(6) and (c)(9) of section 552b of Title 5, United States Code, as amended. The closed session will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

If you wish to attend the public session of the meeting, please inform IMLS as soon as possible by contacting Katherine Maas at (202) 653–4798 or kmaas@imls.gov. Please provide notice of any special needs or accommodations by May 29, 2019.

Dated: May 13, 2019.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2019–10194 Filed 5–15–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 14 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; hales@arts.gov, or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:
Folk & Traditional Arts (review of applications): This meeting will be closed.

Date and time: June 18, 2019; 1:00 p.m. to 3:00 p.m.

Folk & Traditional Arts (review of applications): This meeting will be closed.

Date and time: June 20, 2019; 1:00 p.m. to 3:00 p.m.

Media (review of applications): This meeting will be closed.

Date and time: June 20, 2019; 11:30 a.m. to 1:30 p.m.

Media (review of applications): This meeting will be closed.

Date and time: June 20, 2019; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 25, 2019; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 25, 2019; 4:00 p.m. to 6:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 25, 2019; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 25, 2019; 2:30 p.m. to 4:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 26, 2019; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 26, 2019; 2:30 p.m. to 4:30 p.m.

Media (review of applications): This meeting will be closed.

Date and time: June 27, 2019; 11:30 a.m. to 1:30 p.m.

Media (review of applications): This meeting will be closed.

Date and time: June 27, 2019; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 27, 2019; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: June 27, 2019; 4:00 p.m. to 6:00 p.m.

Dated: May 13, 2019.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019-10133 Filed 5-15-19; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0081]

Information Collection: NRC Form 277, Request for Visit

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public

comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Form 277, Request for Visit."

DATES: Submit comments by July 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0081. Address questions about NRC dockets to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T6-A 10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2019-0081 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0081.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public

Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19126A197. The supporting statement and title of documents are available in ADAMS under Accession No. ML19015A413.

- *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.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Please include Docket ID NRC-2019-0081 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 277, Request for Visit.

2. *OMB approval number*: 3150–0051.
 3. *Type of submission*: Extension.
 4. *The form number if applicable*:
 NRC Form 277.

5. *How often the collection is required or requested*: As needed.

6. *Who will be required or asked to respond*: Licensees and NRC contractors.

7. *The estimated number of annual responses*: 60.

8. *The estimated number of annual respondents*: 60.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request*: 10 hours.

10. *Abstract*: NRC Form 277 is completed by NRC contractors and licensees who have been granted an NRC access authorization and require verification of that access authorization and need-to-know due to (1) a visit to NRC, (2) a visit to other contractors/ licensees or government agencies in which access to classified information will be involved, or (3) unescorted area access is desired.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, on May 10, 2019.

For the Nuclear Regulatory Commission.
David C. Cullison,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–10095 Filed 5–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0047]

Information Collection: NRC Form 237, “Request for Access Authorization”

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 237, “Request for Access Authorization.”

DATES: Submit comments by July 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2019–0047. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to*: David Cullison, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0047 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2019–0047. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0047 on this website.

- *NRC’s Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19126A145. The supporting statement is available in ADAMS under Accession No. ML19130A005.

- *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.

- *NRC’s Clearance Officer*: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Please include Docket ID NRC–2019–0047 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to

request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 237, "Request for Access Authorization."
2. *OMB approval number:* 3150-0050.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 237.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees.
7. *The estimated number of annual responses:* 250.
8. *The estimated number of annual respondents:* 250.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50.
10. *Abstract:* NRC Form 237 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 10th day of May, 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-10099 Filed 5-15-19; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 16, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 10, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 75 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019-136, CP2019-149.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019-10101 Filed 5-15-19; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 16, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 10, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 61 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019-137, CP2019-150.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019-10102 Filed 5-15-19; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85826; File No. SR-NYSE-2019-09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Exchange Rules 104 and 36 To Require Designated Market Makers To Communicate With a Designed Senior Representative of the Issuers of the DMM's Assigned Securities

May 10, 2019.

On March 8, 2019, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rules 104 and 36 to require Designated Market Makers ("DMMs") to communicate with a designated senior representatives of the issuers of the DMM's assigned securities. The proposed rule change was published in the **Federal Register** on March 26, 2019.³ The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve, disapprove, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 10, 2019. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates June 24, 2019, as the date by which the Commission shall either approve or disapprove, or institute

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85367 (Mar. 20, 2019), 84 FR 11382 (Mar. 26, 2019) ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

proceedings to determine whether to approve or disapprove, the proposed rule change (File No. SR–NYSE–2019–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10124 Filed 5–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85838; File No. SR–CboeEDGX–2019–029]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Amending its Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on April 29, 2019, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Equities”) proposes to amend its fee schedule assessed on Members to establish a monthly Trading Rights Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly Trading Rights Fee under the “Membership Fees” section of the fee schedule. The Trading Rights Fee will be assessed on Members that trade more than a specified volume in U.S. equities, and will assist in covering the cost of regulating the Exchange and its Members. Specifically, the Exchange proposes to charge Member firms a monthly Trading Rights Fee of \$500 per month for the ability to trade on the Exchange. So as to continue to encourage active participation on the Exchange by smaller Members, the Trading Rights Fee would not be charged to Members with a monthly ADV³ of less than 100,000 shares. Similarly, to continue to support individual investor order flow on the Exchange, the Trading Rights Fee would not be charged to Members in which at least 90% of their orders submitted to the Exchange per month are retail orders.

Additionally, the Exchange recognizes that new Members are new and important sources of liquidity. As such, the Exchange proposes that new Exchange Members will not be charged the proposed Trading Rights Fee for their first three months of Membership. Moreover, for any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee will be pro-rated in accordance with the date on which Membership is approved. For example, if a firm’s Membership is approved on May 15, 2019, then, as proposed, it would not be charged for its first three

months of Membership. The month of August would then be pro-rated and the Trading Rights Fee would be assessed from August 15, 2019 through the end of the month. During any month in which a firm terminates Membership with the Exchange, the monthly Trading Rights Fee will not be pro-rated.

As proposed, the Exchange believes the Trading Rights Fee assessed aligns with the benefit provided by allowing Members to trade on an efficient and well-regulated market. The proposed Trading Rights Fee will fund a portion of the cost of regulating and maintaining the Exchange’s equities market. Lastly, the Exchange believes the cost of Exchange Membership, including the proposed Trading Rights Fees, is significantly lower than the cost of membership in a number of other SROs.⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed Trading Right Fee is reasonable because the fee will assist in funding the overall regulation and maintenance of the Exchange. Additionally, the Exchange believes the fee is reasonable because the cost of this membership fee is generally less than the analogous membership fees of other markets. For example, the Exchange’s proposed Trading Rights Fee at \$500 a month is substantially lower than the NASDAQ Stock Market’s (“Nasdaq”) analogous fee, which assesses a monthly Trading Rights Fee of \$1,250 per member.

In addition to this, the Exchange believes that not charging a Trading Rights Fee for Members that trade less

⁴ See NASDAQ Stock Market Equity Rules, Equity 7, Sec. 10(a) (assessing a trading rights fee of \$1,250 per month per each member); New York Stock Exchange Price List 2019, “Trading Licenses” (assessing an annual fee \$50,000 for the first trading license held by a member, to which the Exchange notes that the Exchange assesses a \$2,500 annual fee for membership, and that this annual fee coupled with 12 months of the proposed Trading Rights Fees remains substantially lower than NYSE’s annual trading license fee).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁶ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

than a monthly ADV of 100,000 shares is reasonable because it ensures that smaller Members who do not trade significant volume on EDGX Equities can continue to trade on the Exchange at a lower cost. The Exchange believes that not charging a fee for such Members is reasonable because smaller Members with lower volumes executed on the Exchange consume fewer regulatory resources. The Exchange also believes that not charging a Trading Rights Fee for Members that submit 90% or more of their orders per month as retail orders is reasonable because it ensures retail broker Members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange. Furthermore, continuing to allow smaller Members and retail broker Members to trade on the Exchange without incurring a Trading Rights Fee may encourage additional participation from such Members and thereby contribute to a more diverse and competitive market for equity securities traded on the Exchange.

Additionally, the Exchange believes that not charging its new Members the proposed Trading Rights Fee for their first three months of Membership is reasonable because it provides an incentive for firms and other participants that are not currently Members of the Exchange to apply for Membership and bring additional liquidity to the market to the benefit of all market participants. The Exchange believes that not charging a Trading Rights Fee for new Members will incentivize firms to become Members of the Exchange. The Exchange believes creating incentives for new Exchange Members protects investors and the public interest by increasing the competition and liquidity across the Exchange.

The Exchange believes that the proposed Trading Rights Fee is equitable and is not unfairly discriminatory because it will apply equally to all Members with an ADV of 100,000 shares or more traded per month and all Members in which less than 90% of their orders are submitted as retail orders per month.⁷ The Exchange believes that not charging the Trading Rights Fee for Members that do not meet these thresholds in a month is not unfairly discriminatory as it is designed to reduce the costs of smaller

Members and retail-based Members that transact on the Exchange. Furthermore, the Exchange believes that not charging a Trading Rights Fee for a new Member for the first three months of Membership is equitable and not unfairly discriminatory because the proposed waiver will be offered to all market participants that wish to become Members of the Exchange. As stated, the proposed waiver intends to incentivize new Membership which will bring increased liquidity and competition to the benefit of all market participants. In addition to this, the Exchange notes that the proposed fee is equitable and not unfairly discriminatory because it will contribute revenue to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed rule change will apply equally to all Members that reach an ADV of 100,000 shares traded or greater, and those that submit less than 90% of their orders as retail orders per month. Although smaller Members would be excluded from the Trading Rights Fee, the Exchange believes that this may increase competition by encouraging additional order flow from such smaller Members thereby contributing to a more diverse, vibrant, and competitive market. Additionally, while the proposed three month waiver of the Trading Rights Fee only applies to new Members, new Members can be an important source of liquidity and facilitate competition within the market, which uniformly benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange operates in a highly competitive environment in which market participants can readily favor competing exchanges and marketplaces if they deem fee levels at a particular exchange or other venue to be excessive. If the proposed fee increase is unattractive to members, it is likely that the Exchange will lose

membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, and in covering costs associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. The Exchange notes that competitors are free to modify their own fees in response to its proposal, and because Members are not compelled to be Members of the Exchange and may trade on numerous other exchanges and other alternative venues, the Exchange believes that the proposed fee change will not impose a burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

⁷ A Member will not be charged if it meets either one (or both) of the exceptions. To illustrate, if a Member submits 5% of its orders as retail orders but only has an ADV of 90,000 shares traded, that Member will not be charged the proposed Trading Rights Fee.

• Send an email to rule-comments@sec.gov. Please include File Number SR–CboeEDGX–2019–029 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–029 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019–10117 Filed 5–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85824; File No. SR–CboeBYX–2019–008]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to the BYX Equities Trading Platform (“BYX Equities”) as it Relates to Pricing for the Use of the TRIM Routing Strategy

May 10, 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 May 1, 2019, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule applicable to the BYX equities trading platform (“BYX Equities”) as it relates to pricing for the use of the TRIM routing strategy. The text of the proposed rule change is attached as Exhibit 5[sic].

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BYX Equities fee schedule to change the pricing applicable to orders routed using the TRIM routing strategy in connection with planned changes to the System routing table.³ TRIM is a routing strategy offered by the Exchange that is used to target certain low cost exchanges by routing to those venues after accessing available liquidity on the BYX Book. In February 2019, New York Stock Exchange (“NYSE”) was removed from the System routing table as a low cost protected market center, and NYSE National, Inc. (“NYSE National”) was added as a low cost protected market center. Therefore, pursuant to Rule 11.13(b)(3), the Exchange has determined to modify the System routing table such that TRIM no longer includes NYSE, and has decided to add NYSE National as a low cost venue under the TRIM routing strategy. In addition to this, the Exchange has determined that Cboe BZX Exchange, Inc. (“BZX”) is generally not a low cost venue and, therefore, should also be removed from the list of venues under the TRIM routing strategy. These changes to the TRIM routing strategy are scheduled to be introduced on May 1, 2019.

Currently, orders routed to NYSE using the TRIM routing strategy are assessed a fee of \$0.00280 per share.⁴ Orders routed to BZX using the TRIM routing strategy are assessed a fee of \$0.00300 per share.⁵ Also, orders currently routed to NYSE National using the SLIM routing strategy are provided a rebate of \$0.00200 and yield fee code NX. The Exchange proposes changes to these fees in connection with the changes to the routing table for TRIM.

In recognition of the fact that NYSE National can be accessed at a low cost today, the Exchange proposes to provide a rebate to orders routed to this

³ The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. See Rule 11.13(b)(3). The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

⁴ See Cboe BYX U.S. Equities Exchange Fee Schedule, fee code D.

⁵ See Cboe BYX U.S. Equities Exchange Fee Schedule, fee code SZ.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹⁰ 17 CFR 200.30–3(a)(12).

exchange using the TRIM routing strategy. Specifically, the Exchange proposes to add TRIM to the list of routing strategies that yield fee code NX, which relates to orders routed to NYSE National. As proposed, orders routed using the TRIM routing strategy would be provided a rebate of \$0.00200 per share in securities priced at or above \$1.00, and no charge or rebate would be applied for securities priced below \$1.00. The rebates are consistent with rebates currently offered for orders routed to NYSE National using a similar low cost routing strategy, SLIM, which yields fee code NX.

In addition to this, since NYSE is no longer included as a low cost protected market center and because BZX is being removed from the TRIM routing strategy as it is generally not a low cost venue, the Exchange proposes to eliminate special pricing for orders routed to NYSE using the TRIM routing strategy under fee code D and for orders routed to BZX using the TRIM strategy under fee code SZ. Such orders would now pay the default routing fee for orders routed using this routing strategy.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁷ in general, and furthers the requirements of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes the proposed routing fee changes are appropriate as they reflect changes to the System routing table used to determine the order in which venues are accessed using the TRIM routing strategy. TRIM specifically targets certain equities exchanges that provide low cost executions or rebates to liquidity removing orders, and routes to those venues after trading with the BYX Book. The Exchange believes that the proposed changes reflect the intent of Members when they submit routable order flow to the Exchange using the TRIM routing strategy.

The Exchange believes that it is reasonable and equitable to assess the proposed rebate on orders routed to NYSE National using the TRIM routing strategy. As mentioned previously, the Exchange recently added this exchange to its list of low cost protected market centers, and wishes to provide the benefit of the rebate or lower fee

provided by this market to BYX Members using the TRIM routing strategy. The Exchange currently offers such incentives when routing to those markets using another low cost routing strategy, SLIM. As is the case for orders routed via the SLIM routing strategy to NYSE National, the Exchange believes the proposed rebate applicable to the TRIM routing strategy to this venues generally reflect the current transaction rebates available for accessing liquidity on NYSE National.⁹ The Exchange believes that this change may increase interest in the Exchange's TRIM routing strategy, in particular, by passing on better pricing to BYX members that choose to enter such orders on the Exchange, thereby encouraging additional order flow to be entered to the BYX Book. In addition to this, the Exchange believes that is reasonable and equitable to eliminate special pricing for orders routed to NYSE and BZX using TRIM under fee code D and SZ, respectively, as NYSE and BZX will no longer be included as a low cost venues under the TRIM routing strategy.

Finally, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as the proposed rebate would apply equally to all Members that use the Exchange to route orders using the associated routing strategy. The proposed fees are designed to reflect the fees charged and rebates offered by certain away trading centers that are accessed by Exchange routing strategies, and are being made in conjunction with changes to the System routing table designed to provide Members with low cost executions for their routable order flow. Furthermore, if Members do not favor the proposed pricing, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed routing fee changes are designed to reflect changes being made to the System routing table used to determine where to send certain routable orders, and generally provide better pricing to members for orders routed to low cost protected market centers using the Exchange's routing strategies. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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

⁶ See Cboe BYX U.S. Equities Exchange Fee Schedule, fee codes BJ, C and proposed NX.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ NYSE National currently provides a rebate of \$0.00200 per share in securities priced at or above \$1.00 for members that achieve their taking tier. See NYSE National Schedule of Fees and Rebates, I. Transaction Fees, B. Tiered Rates. Orders that remove liquidity in securities below \$1.00 are executed without charge or rebate. See NYSE National, Schedule of Fees and Rebates, I. Transaction Fees, A. General Rates.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

• Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-008 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2019-008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-008 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-10113 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85831; File No. SR-CboeEDGX-2019-028]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 21.22 (Complex Automated Improvement Mechanism)

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2019, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to adopt Rule 21.22. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. ("Cboe Global"), which is the parent company of Cboe Exchange, Inc. ("Cboe Options") and Cboe C2 Exchange, Inc. ("C2"), acquired the Exchange, Cboe EDGA Exchange, Inc. ("EDGA"), Cboe BZX Exchange, Inc. ("BZX or BZX Options"), and Cboe BYX Exchange, Inc. ("BYX" and, together with C2, Cboe Options, the Exchange, EDGA, and BZX, the "Cboe Affiliated Exchanges"). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2, and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is available on Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The proposed rule change permits use of its Automated Improvement Mechanism ("AIM") for complex orders. Specifically, the proposed rule change adopts Rule 21.22, which describes how complex orders may be submitted to and will be processed in an AIM Auction ("C-AIM" or "C-AIM Auction").³ Complex orders will be processed and executed in a C-AIM Auction pursuant to proposed Rule 21.22 in a similar manner as simple orders are processed and executed in an AIM Auction pursuant to Rule 21.19. C-AIM will provide market participants with an opportunity to receive price improvement for their complex orders. The proposed rule change is similar to the complex order price improvement mechanism of Cboe Options and other

³ While the proposed rule change defines an AIM Auction for complex orders as a C-AIM Auction, the same mechanism is used to process both simple orders and complex orders. For clarity and ease of reference, the Exchange proposes a separate name and rule for C-AIM to help Users distinguish how the mechanism applies to simple and complex orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 17 CFR 200.30-3(a)(12).

options exchanges. The Exchange believes the similarity of C-AIM to AIM and the mechanisms of other exchanges will allow the Exchange's proposed price improvement functionality to fit seamlessly into the options market and benefit market participants who are already familiar with this similar functionality. The Exchange also believes this will encourage Options Members to compete vigorously to provide the opportunity for price improvement for complex orders in a competitive auction process.

An Options Member (the "Initiating Member") may electronically submit for execution a complex order it represents as agent ("Agency Order") against principal interest or a solicited complex order(s)⁴ (an "Initiating Order") provided it submits the Agency Order for electronic execution into a C-AIM Auction pursuant to proposed Rule 21.22. For purposes of proposed Rule 21.22, the term "SBBO" means the synthetic best bid or offer⁵ at the particular point in time applicable to the reference, and the term "Initial SBBO" means the synthetic best bid or offer at the time the C-AIM Auction is initiated.⁶

As defined, the Initiating Order may be comprised of multiple orders, in which case they must total the same size as the Agency Order. This will accommodate multiple contra-parties and increase the opportunities for customer orders to be submitted into a C-AIM Auction with the potential for price improvement, since the Initiating Order must stop the full size of the Agency Order. This will have no impact on the execution of the Agency Order, which may trade against multiple contra-parties depending on the final execution price(s), as set forth in proposed paragraph (e). The Exchange notes that with regard to order entry, the

first order submitted into the system is marked as the agency side and the second order is marked as the initiating/ contra-side. Additionally, the Initiating Order will always be entered as a single order, even if that order consists of multiple contra-parties, which are allocated their portion of the trade in a post-trade allocation.

The Initiating Member may initiate a C-AIM Auction if all of the following conditions are met:

- The Agency Order may be in any class of options traded on the Exchange.
- The Initiating Member must mark an Agency Order for C-AIM Auction processing.
- There is no minimum size for Agency Orders. The Initiating Order must be for the same size as the Agency Order.
- The price of the Agency Order and Initiating Order must be in an increment of \$0.01.
- The Initiating Member may not designate an Agency Order or Initiating Order as Post Only.
- An Initiating Member may only submit an Agency Order to a C-AIM Auction after the complex order book ("COB") opens.

The System rejects or cancels both an Agency Order and Initiating Order submitted to a C-AIM Auction that do not meet these conditions.⁷

The Initiating Order must stop the entire Agency Order at a price that satisfies the following:

- If the Agency Order is to buy (sell) and (a) the applicable side of the Exchange's best bid or offer ("BBO") on any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least \$0.01 better than the SBB (SBO); or (b) the applicable side of the BBO on each component of the complex strategy represents a non-Priority Customer order or quote on the Simple Book, the stop price must be at or better than the SBB (SBO). This ensures the execution price of the Agency Order will improve the price of any Priority Customer orders resting on the Simple Book.⁸

⁷ See proposed Rule 21.22(a). Proposed paragraph (a) is the same as the corresponding paragraph for simple AIM (see Rule 21.19(a)), except the proposed rule change does not provide that an Initiating Member may not submit an Agency Order if the NBBO is crossed (unless the Agency Order is an AIM ISO or Sweep and AIM). As noted above, there is no NBBO for complex orders, and the legs of complex orders are not subject to the restriction on NBBO trade-throughs. Additionally, the proposed rule change references the opening of the COB rather than the market open, as the opening of the COB is when complex orders may begin trading.

⁸ This is consistent with complex order priority, which ensures the execution price of complex orders will not be executed at prices inferior to the SBBO or at a price equal to the SBBO when there

- If the Agency Order is to buy (sell) and (a) a Priority Customer buy (sell) complex order rests on the COB, the stop price must be at least \$0.01 better than the bid (offer) of the resting complex order; or (b) a non-Priority Customer buy (sell) complex order rests on the COB, the stop price must be at least \$0.01 better than the bid (offer) of the resting complex order, unless the Agency Order is a Priority Customer order, in which case the stop price must be at or better than the bid (offer) of the resting complex order. This ensures the execution price of the Agency Order will improve the price of any resting Priority Customer complex orders on the COB, and that the execution price of a Priority Customer Agency Order will not be inferior to the price of any resting non-Priority Customer complex orders on the COB.⁹

- If the Agency Order is to buy (sell) and (a) the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least \$0.01 better than the SBO (SBB), or (b) the BBO of each component of the complex strategy represents a non-Priority Customer order on the Simple Book, the stop price must be at or better than the SBO (SBB). This ensures the execution price of the Agency Order will improve the price of any Priority Customer orders resting in the Simple Book at the opposite side of the SBBO, and not be through the opposite side of the SBBO. While the stop price may cross the opposite side best-priced complex order resting on the opposite side of the COB, as noted below, any complex interest at a better price than the stop price will trade ahead of the Initiating Order. Pursuant to proposed paragraph (e), any contra-side interest available at better prices than the stop price at the conclusion of a C-AIM Auction will execute against the Agency Order ahead of the Initiating Order. Therefore, the Agency Order will execute at the best prices available at the conclusion of the C-AIM Auction, even if the stop price was inferior to those prices. Simple AIM Auctions may similarly start at prices inferior to the

is a Priority Customer at the BBO for any component. See Rule 21.20(c)(2)(E). As noted above, there is no NBBO for complex orders, so the proposed rule change does not have a price requirement for the stop price related to the NBBO, unlike simple AIM. See Rule 21.19(b)(1).

⁹ This corresponds to the same-side simple order check for AIM, which requires the Agency Order to improve the price of a resting Priority Customer order on the Simple Book, or a non-Priority Customer order or quote on the Simple Book unless the Agency Order is for a Priority Customer. See Rule 21.19(b)(2).

⁴ Unlike simple AIM, there is no restriction on the solicited order being for the account of any Options Market Maker registered in the applicable series on the Exchange, as there are no Market Maker appointments to complex strategies. Additionally, bulk messages (the equivalent of quoting functionality) are not available for complex orders. See Rule 21.20(b).

⁵ The SBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Book. See Rule 21.20(a)(11).

⁶ See proposed introductory paragraph to Rule 21.22. This proposed paragraph is the same as the corresponding paragraph for simple AIM (introductory paragraph to Rule 21.19), except it refers to SBBO rather than the national best bid or offer ("NBBO"). There is no NBBO for complex orders, as complex orders may be executed without consideration of any prices for the complex strategy that might be available on other exchanges trading the same complex strategy. See Rule 21.20(c)(2)(E). Additionally, executions of legs of complex orders are exceptions to the prohibition of trade-throughs. See Rule 27.2(b)(8).

NBBO for the series in certain instances.¹⁰

- The Initiating Member must specify (a) a single price at which it seeks to execute the Agency Order against the Initiating Order (a “single-price submission”), including whether it elects to have last priority in allocation (as described below), or (b) an initial stop price and instruction to automatically match the price and size of all C-AIM responses and other trading interest (“auto-match”) up to a designated limit price or at all prices that improve the stop price. These options provide the Initiating Member with flexibility regarding the prices at which it desires to trade against the Initiating Order, and the same flexibility that is currently available to Options Members with respect to simple orders.¹¹

The System rejects or cancels both an Agency Order and Initiating Order submitted to a C-AIM Auction that do not meet these conditions.¹²

Upon receipt of an Agency Order that meets the above conditions, the C-AIM Auction process commences. With respect to Agency Orders for which the smallest leg is less than 50 standard option contracts (or 500 mini-option contracts), only one C-AIM Auction may be ongoing at any given time in a complex strategy, and C-AIM Auctions in the same complex strategy may not queue or overlap in any manner. One or more C-AIM Auctions in the same complex strategy for Agency Orders for which the smallest leg is 50 standard option contracts (or 500 mini-option contracts) or more may occur at the same time. C-AIM Auctions in different complex strategies may be ongoing at any given time, even if the complex

strategies have overlapping components. A C-AIM Auction may be ongoing at the same time as an AIM Auction in any component of the complex strategy.

To the extent there is more than one C-AIM Auction in a complex strategy underway at a time, the C-AIM Auctions conclude sequentially based on the exact time each C-AIM Auction commenced, unless terminated early pursuant to proposed paragraph (d). In the event there are multiple C-AIM Auctions underway that are each terminated early pursuant to proposed paragraph (d), the System processes the C-AIM Auctions sequentially based on the exact time each C-AIM Auction commenced. If the System receives a simple order that causes an AIM and C-AIM (or multiple AIM and/or C-AIM) Auctions to conclude pursuant to proposed paragraph (d) and Rule 21.19(d), the System first processes AIM Auctions (in price-time priority) and then processes C-AIM Auctions (in price-time priority). At the time each C-AIM Auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) and takes into account all C-AIM Auction responses and unrelated orders and quotes in place at the exact time of conclusion.¹³

The Exchange currently permits concurrent AIM Auctions in the same series (for Agency Orders of 50 or more contracts) and thus believes it is appropriate to similarly permit concurrent C-AIM Auctions in the same complex strategy (for Agency Orders for which the smallest leg is for 50 or more contracts). Different complex strategies are essentially different products, as orders in those strategies cannot interact, just as orders in different series or classes cannot interact. Therefore, the Exchange believes concurrent C-AIM Auctions in different complex strategies is appropriate given that concurrent simple AIM Auctions in different series or different classes may occur. Similarly, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the appropriate ratio for the complex strategy. A simple order in one component of a complex

strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent AIM and C-AIM Auctions that share a component. As proposed, C-AIM Auctions will ensure that Agency Orders execute at prices that protect Priority Customer orders in the Simple Book and that are not inferior to the SBBO at the conclusion of the C-AIM Auction, even when there are concurrent simple and complex auctions occurring. The proposed rule change sets forth how any auctions with overlapping components will conclude if terminated due to the same event.

The Exchange notes it is currently possible for auctions in a component leg and a complex strategy containing that component (such as a simple AIM Auction in the component and a complex order auction (“COA”) in the complex strategy that contains that component) to occur concurrently, and at the end of each auction, it is possible for interest resting in the Simple Book to trade against the complex order subject to the COA. While these auctions may be occurring at the same time, they will be processed in the order in which they are terminated (similar to how the System will process auctions as proposed above). In other words, suppose there is an AIM Auction in a series and a COA in a complex strategy for which one of the components is the same series both occurring, which began and will terminate in that order, and each of which last 100 milliseconds. While it is possible for both auctions to terminate nearly simultaneously, the System will still process them in the order in which they terminate. When the AIM Auction terminates, the System will process it in accordance with Rule 21.19, and the auctioned order may trade against any resting interest (in addition to the contra-side order and responses submitted to that AIM Auction, which may only trade against the order auctioned in that AIM pursuant to Rule 21.19). The System will then process the COA Auction when it terminates, and the auctioned order may trade against any resting interest, including any simple interest that did not execute against the AIM order (in addition to the contra-side order and responses submitted to that COA Auction, which may only trade against the order auctioned in that COA), pursuant to Rule 21.20.

The System initiates the C-AIM Auction process by sending a C-AIM Auction notification message detailing the side, size, price, Capacity, Auction ID, and complex strategy of the Agency Order to all Options Members that elect

¹⁰ Simple AIM has no price checks for orders on the opposite side of the Agency Order. The proposed rule change adopts price checks for simple orders that constitute the SBBO on the opposite side of the Agency Order to ensure that the Agency Order does not execute at a price through the opposite side SBBO to protect orders (including Priority Customer orders) resting in the Simple Book. While there is no complex AIM sweep or complex sweep and AIM order for C-AIM, because complex orders do not route (and there is no applicable NBBO), permitting the stop price to cross the opposite side of the COB is consistent with those order types in simple AIM, which permit the stop price to be inferior to the Initial NBBO. See Rule 21.19(b)(3). The execution at the conclusion of a C-AIM Auction will essentially “sweep” better-priced contra-side complex interest that is available on the Exchange.

¹¹ These are the same options available for Initiating Members in simple AIM. See Rule 21.19(b)(4).

¹² See proposed Rule 21.22(b). Proposed paragraph (a) is the same as the corresponding paragraph for simple AIM (see Rule 21.19(a)), except as described above, including using the SBBO and COB prices rather than the NBBO as reference prices for the stop price.

¹³ See proposed Rule 21.22(c)(1). Proposed paragraph (c)(1) is the same as the corresponding paragraph for simple AIM (see Rule 21.19(c)(1)), except the proposed change adds how the System will handle ongoing auctions that include an overlapping component (whether that component is the subject of an ongoing simple AIM Auction or part of a complex strategy for which a different C-AIM Auction is ongoing) and adds that whether concurrent C-AIM Auctions (subject to the same minimum size restriction as simple orders) in the same complex strategy may occur is based on the size of the smallest leg of the Agency Order.

to receive C-AIM Auction notification messages. C-AIM Auction notification messages are not included in OPRA.¹⁴ A C-AIM Auction will last for a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than one second, and which the Exchange will announce to Options Members via Exchange Notice and/or technical specifications.¹⁵ An Initiating Member may not modify or cancel an Agency Order or Initiating Order after submission to a C-AIM Auction.¹⁶

Any User other than the Initiating Member (determined by EFID) may submit responses to a C-AIM Auction that are properly marked specifying size, side of the market, and the Auction ID for the C-AIM Auction to which the User is submitting the response. A C-AIM Auction response may only participate in the C-AIM Auction with the Auction ID specified in the response.¹⁷

- The minimum price increment for C-AIM responses is \$0.01. The System rejects a C-AIM response that is not in a \$0.01 increment.¹⁸

- C-AIM responses that cross the Initial SBBO or the price of a complex order resting at the top of the COB on the same side as the Agency Order are capped at (a) the better of the Initial SBBO or the price of the resting complex order, or (b) \$0.01 better than the better of the Initial SBBO or the resting complex order if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order. The System executes these C-AIM responses, if possible, at the most aggressive permissible price not outside the Initial SBBO or price of the resting complex order. This will ensure the execution

price does not cross the Initial SBBO or prices of resting complex orders, which the stop price must be at or better than (and must be better than if represented by a Priority Customer order) as discussed above.¹⁹

- A User may submit multiple C-AIM responses at the same or multiple prices to a C-AIM Auction. The System aggregates all of a User's complex orders on the COB and C-AIM responses for the same EFID at the same price.²⁰ The Exchange believes this is appropriate since all interest at a single price is considered for execution against the Agency Order at that price, and can then together be subject to the size cap, as discussed below. This (combined with the proposed size cap described below) will prevent an Options Member from submitting multiple orders or responses at the same price to obtain a larger pro-rata share of the Agency Order.

- The System caps the size of a C-AIM response, or the aggregate size of a User's complex orders on the COB and C-AIM responses for the same EFID at the same price, at the size of the Agency Order (*i.e.*, the System ignores size in excess of the size of the Agency Order when processing the C-AIM Auction). The Exchange believes this will prevent an Options Member from submitting an order or response with an extremely large size in order to obtain a larger pro-rata share of the Agency Order.²¹

- C-AIM responses must be on the opposite side of the market as the Agency Order. The System rejects a C-AIM response on the same side of the market as the Agency Order.²²

- C-AIM responses may be designated with the MTP modifier of MTP Cancel Newest, but no other MTP modifiers. The System rejects a C-AIM response with any other MTP modifier.²³

- C-AIM responses may not be designated as immediate-or-cancel

(“IOC”). The System rejects a C-AIM response designated as IOC.²⁴

- C-AIM responses are not visible to C-AIM Auction participants or disseminated to OPRA.²⁵

- A User may modify or cancel its C-AIM responses during the C-AIM Auction.²⁶

A C-AIM Auction concludes at the earliest to occur of the following times:

- The end of the C-AIM Auction period;
- upon receipt by the System of an unrelated non-Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price better than the stop price;
- upon receipt by the System of an unrelated Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price equal to or better than the stop price;
- upon receipt by the System of an unrelated non-Priority Customer order or quote that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be better than the stop price;
- upon receipt by the System of a Priority Customer order in any component of the complex strategy that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be equal to or better than the stop price;
- upon receipt by the System of a simple non-Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be equal to or better than the stop price;
- the market close; and
- any time the Exchange halts trading in the complex strategy or any component of the complex strategy, provided, however, that in such instance, the C-AIM Auction concludes without execution.²⁷

¹⁴ See proposed Rule 21.22(c)(2). The proposed C-AIM Auction notification message is the same as the corresponding message for simple AIM (see Rule 21.19(c)(2)), except the proposed rule change indicates the notification message for a C-AIM Auction will include the complex strategy rather than the series. The proposed rule change also states the C-AIM notification message will include the Capacity of the Agency Order. The notification message for simple AIM includes Capacity, but that detail is not currently included in Rule 21.19.

¹⁵ See proposed Rule 21.22(c)(3). The proposed C-AIM Auction period is the same as the auction period for simple AIM (see Rule 21.19(c)(3)).

¹⁶ See proposed Rule 21.22(c)(4). The proposed C-AIM Auction notification message [sic] is the same as the corresponding provision for simple AIM (see Rule 21.19(c)(4)).

¹⁷ See proposed Rule 21.22(c)(5). The proposed provisions regarding C-AIM responses are the same as the provisions regarding AIM responses, except as set forth below. See Rule 21.19(c)(5).

¹⁸ See proposed Rule 21.22(c)(5)(A). The proposed minimum increment for C-AIM responses is the same as the minimum increment for AIM responses. See Rule 21.19(c)(5)(A).

¹⁹ See proposed Rule 21.22(c)(5)(B); see also proposed Rule 21.22(b)(2). This proposed provision is similar to the corresponding provision for AIM responses, except it refers to the SBBO and prices of complex order rather than the NBBO. See Rule 21.19(c)(5)(B).

²⁰ See proposed Rule 21.22(c)(5)(C). This is the same as the corresponding provision for simple AIM, except it proposes to aggregate responses with complex order interest rather than simple order interest. See Rule 21.19(c)(5)(C).

²¹ See proposed Rule 21.22(c)(5)(D). This is the same as the corresponding provision for simple AIM, except it proposes to aggregate responses with complex order interest, and cap aggregate complex size, rather than simple order interest. See Rule 21.19(c)(5)(D).

²² See proposed Rule 21.21(c)(5)(E). This is the same as the corresponding provision for simple AIM. See Rule 21.19(c)(5)(E).

²³ See proposed Rule 21.22(c)(5)(F). This is the same as the corresponding provision for simple AIM. See Rule 21.19(c)(5)(F).

²⁴ See proposed Rule 21.22(c)(5)(G). This is the same as the corresponding provision for simple AIM, except the proposed rule change does not reference fill-or-kill (“FOK”) as a prohibited designation for C-AIM response. FOK is never available for complex orders, and thus will not be available for C-AIM responses (and does not need to be specifically prohibited for C-AIM responses). See Rules 21.19(c)(5)(G) and 21.20(b).

²⁵ See proposed Rule 21.22(c)(5)(H). This is the same as the corresponding provision for simple AIM. See Rule 21.19(c)(5)(H).

²⁶ See proposed Rule 21.22(c)(5)(I). This is the same as the corresponding provision for simple AIM. See Rule 21.19(c)(5)(I).

²⁷ See proposed Rule 21.22(d). The proposed events that cause a C-AIM Auction to conclude are similar as those that cause a simple AIM Auction

The Exchange proposes to conclude the C-AIM Auction in response to the incoming orders described above, as they would cause the SBBO or the best-priced complex order on the same side of the market as the Agency Order to be better priced than the stop price, or cause the stop price to be the same price as the SBBO with a Priority Customer order on the BBO for a component or a Priority Customer complex order on the COB. Similarly, the incoming orders described above would cause the opposite side SBBO to be at or better than the stop price. These events would create circumstances under which a C-AIM Auction would not have been initiated, and therefore, the Exchange believes it is appropriate to conclude a C-AIM Auction when they exist.

If the System receives an unrelated market or marketable limit complex order (against the SBBO or the best price of a complex order resting in the COB), including a Post Only complex order, on the opposite side of the market during a C-AIM Auction, the C-AIM Auction does not end early, and the System executes the order against interest outside the C-AIM Auction or posts the complex order to the COB. If contracts remain from the unrelated complex order at the time the C-AIM Auction ends, they may be allocated for execution against the Agency Order pursuant to proposed paragraph (e).²⁸ Because these orders may have the opportunity to trade against the Agency Order following the conclusion of the C-AIM Auction, which execution must still be at or better than the SBBO and the best-priced complex orders on the COB, the Exchange does not believe it is necessary to cause a C-AIM Auction to conclude early in the event the Exchange receives such orders. This will provide more time for potential price improvement, and the unrelated complex order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side interest.

At the conclusion of the C-AIM Auction, the System executes the Agency Order against the Initiating Order or contra-side complex interest (which includes complex orders on the COB and C-AIM responses) at the best price(s) as follows, which price(s) must be at or between the SBBO and the best prices of any complex orders resting on

to conclude, except are based on the entry of simple or complex orders that impact the SBBO or the best available prices on the same side of the COB rather than the BBO. *See* Rule 21.19(d).

²⁸ *See* proposed Rule 21.22(d). Similarly, market or marketable limit simple orders on the opposite side of the Agency Order will not cause an AIM Auction to end. *See* Rule 21.19(d).

each side of the COB at the conclusion of the C-AIM Auction:

- If the C-AIM Auction results in no price improvement, the System executes the Agency Order at the stop price against contra-side interest in the following order:

- Priority Customer complex orders on the COB (in time priority);
- the Initiating Order for the greater of (a) one contract or (b) up to 50% of the Agency Order if there is contra-side complex interest from one other User at the stop price or 40% of the Agency Order if there is contra-side complex interest from two or more other Users at the stop price (which percentages are based on the number of contracts remaining after execution against Priority Customer complex orders). Under no circumstances does the Initiating Member receive an allocation percentage, at the final price point, of more than 50% of the initial Agency Order in the event there is interest from one other User or 40% of the initial Agency Order in the event there is interest from two or more other Users;

- remaining contra-side complex interest in a pro-rata manner; and
- the Initiating Order to the extent there are any remaining contracts.²⁹

- If the C-AIM Auction results in price improvement for the Agency Order and the Initiating Member selected a single-price submission, the System executes the Agency Order at each price level better than the stop price against contra-side complex interest in the following order:

- Priority Customer complex orders on the COB (in time priority); and
- all other contra-side complex interest in a pro-rata manner.

If the price at which the balance of the Agency Order can be fully executed equals the stop price, then the System executes any remaining contracts from the Agency Order at that price in the order described in the preceding bulleted paragraph.³⁰

- If the C-AIM Auction results in price improvement for the Agency Order and the Initiating Member selected auto-match, at each price level

²⁹ *See* proposed Rule 21.22(e)(2). This is the same as the allocation of contra-side simple interest in simple AIM if there is price improvement for a single-price submission, except the Exchange does not propose to make Priority Orders available in C-AIM, and the Exchange does not offer complex reserve orders so there would be no nondisplayed Reserve Quantity available on the COB for execution. *See* Rule 21.19(e)(1).

³⁰ *See* proposed Rule 21.22(e)(1). This is the same as the allocation of contra-side simple interest in simple AIM if there is no price improvement, except the Exchange does not propose to make Priority Orders available in C-AIM. *See* Rule 21.19(e)(1).

better than the stop price (or at each price level better than the stop price up to the limit price if the Initiating Member specified one), the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all other contra-side complex interest and then executes the Agency Order against that contra-side complex interest in the order set forth in the preceding bulleted paragraph. If the price at which the balance of the Agency Order can be fully executed equals the stop price, the System executes those contracts at that price in the order set forth in first bulleted paragraph above.³¹

- If the Initiating Member selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order. If the Initiating Member elects last priority, then notwithstanding proposed subparagraphs (e)(1) and (2) (as described above), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all contra-side complex interest (in the order set forth in proposed subparagraph (e)(2) above) at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted.³²

The System cancels or rejects any unexecuted C-Aim responses (or unexecuted portions) at the conclusion of the C-AIM Auction.³³

Because, as proposed, the execution prices for an Agency Order will always be better than the SBBO existing at the conclusion of the C-AIM Auction if it includes a Priority Customer order on any leg, the Agency Order will only execute against the Initiating Order, C-AIM responses, and complex orders resting in the COB, and will not leg into the Simple Book, at the conclusion of a C-AIM Auction. This is consistent with current complex order priority principles, pursuant to which complex orders may only trade against complex interest at prices that improve the BBO of any component that is represented by a Priority Customer order.³⁴

Currently, the Exchange makes one auction available to complex orders, the

³¹ *See* proposed Rule 21.22(e)(3). The proposed auto-match functionality for C-AIM is the same as the corresponding auto-match functionality for simple AIM. *See* Rule 21.19(e)(3).

³² *See* proposed Rule 21.22(e)(4). The proposed last priority option for C-AIM is the same as the corresponding last priority option for simple AIM. *See* Rule 21.19(e)(4).

³³ *See* proposed Rule 21.22(e)(6).

³⁴ *See* proposed Rule 21.22(e)(5) and current Rule 21.20(c)(3).

complex order auction (“COA”).³⁵ Pursuant to current EDGX Rules for execution following a COA, a complex order will be allocated first in price priority and then at the same price to Priority Customer orders resting on the Simple Book, COA responses and unrelated complex orders on the COB in time priority, and remaining individual orders in the Simple Book (*i.e.*, non-Priority Customer), which will be allocated pursuant to Rule 21.8.³⁶

The Simple Book and the COB are separate, and orders on each do not interact unless a complex order legs into the Simple Book. As a result, the System is not able to calculate the aggregate size of complex auction responses and complex orders on the COB and the size of simple orders in the legs that comprise the complex strategy at each potential execution price (as executions may occur at multiple prices) prior to execution of an order following the complex auction. Following a COA, the System first looks to determine whether there are Priority Customer orders resting in the Simple Book at the final auction price (and in the applicable ratio). If there are, the System executes the complex order against those simple orders. Following that execution, the System then looks back at the COA responses and complex orders resting in the COB to determine whether there is interest against which the order can execute. If there is, the System executes the remaining portion of the complex order against that complex contra-side interest. Finally, if there is any size left, the System looks back at the Simple Book to determine whether any orders in the legs are able to trade against any remaining contracts in the complex order. If there is, the System executes the remaining portion of the complex order again against orders in the Simple Book. Because of this process, prior to execution against any Priority Customer simple orders at a single price level, the System would not know the aggregate interest available on both the Simple Book and COB to execute against the auctioned order at that price level.

If the Exchange permitted Agency Orders to leg into the Simple Book following a C- AIM Auction, it similarly would not know how much aggregate simple and complex interest is available at a price level once it began executing the Agency Order at that price level. Unlike a COA, however, the amount of aggregate interest available to execute against the Agency Order will be relevant in a C- AIM Auction with respect to the allocation of contracts

against the Agency Order and other interest at each price level, and with respect to determining the final price level at which the Agency Order will execute. For example, when auto-match is selected, because the System will not be able to determine the aggregate size of contra-side interest (including simple and complex) at that price level, it would not be able to determine how many contracts of the Agency Order should execute against the Initiating Order (which should equal the aggregate size of that contra-side interest). Additionally, because the System will not be able to determine the aggregate size of contra-side interest (including simple and complex) at the stop price, it would not be able to determine the applicable percentage of the Agency Order that should execute against the Initiating Order.

The Exchange notes there would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C- AIM Auction³⁷ and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality available to Options Members. The proposed rule change will ensure the Agency Order executes in accordance with the C- AIM allocation principles (which are consistent with AIM allocation principles), which provide Priority Customers with priority over the Initiating Order (and other contra-side interest) but also provide for the Initiating Order to execute against a certain portion of the Agency Order, as well as provide Initiating Members with flexibility to submit single-price submissions or auto-match at multiple price levels. The Exchange believes providing this functionality will encourage Options Members to submit complex orders into C- AIM Auctions and provide customer orders with opportunities for price improvement. It will also ensure orders (including Priority Customer orders) on the Simple Book are protected in accordance with current complex order priority

³⁷ The Exchange notes it currently does not permit all-or-none (“AON”) orders to leg into the Simple Book following a COA due to the same technical complexities.³⁷ [sic] While an Agency Order is not submitted as an AON order, an Agency Order, like an AON order, must execute in its entirety or not at all. See Rule 21.1(d)(4). Because an Agency Order must fully execute at the conclusion of a C- AIM Auction (and will never rest in the COB), it effectively functions like an AON Order, and the Exchange believes it is similarly appropriate to not leg Agency Orders into the Simple Book.

principles,³⁸ as an Agency Order will only be permitted to execute at prices that do not trade at the SBBO existing at the conclusion of the C- AIM Auction if it includes a Priority Customer order on any leg, and that do not trade through the SBBO existing at the conclusion of the C- AIM Auction.³⁹

In lieu of the procedures set forth above, an Initiating Member may enter an Agency Order for the account of a Priority Customer paired with a solicited order(s) for the account of a Priority Customer, which paired orders the System automatically executes without a C- AIM Auction (“Customer-to-Customer C- AIM Immediate Cross”), subject to the following:

- The transaction price must be at or between the SBBO and may not equal either side of the SBBO if the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book;
- the transaction price must be at or between the best-priced complex orders in the complex strategy resting on the COB and may not equal the price of a Priority Customer complex order resting on either side of the COB; and
- the System does not initiate a Customer-to-Customer Complex C- AIM Immediate Cross if the transaction price equals (A) either side of the SBBO and the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, or (B) the price of a Priority Customer complex order resting on either side of the COB. Instead, the System cancels the Agency Order and Initiating Order.⁴⁰

An Options Member may only use a C- AIM Auction where there is a genuine intention to execute a bona fide transaction.⁴¹

A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating C- AIM Auctions, including to cause a C- AIM Auction to conclude before the end of the C- AIM Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 3.1. It will also be

³⁸ See proposed Rule 21.22(e)(5) and current Rule 21.20(c)(3).

³⁹ See Rule 21.20(c)(2)(E) and (d)(6).

⁴⁰ See proposed Rule 21.22(f). The proposed Customer-to-Customer C- AIM Immediate Cross is similar to the Customer-to-Customer AIM Immediate Cross, except it compares the price of the Priority Customer orders to the SBBO and best-priced complex orders in the COB rather than the NBBO, as the simple AIM version does. See Rule 21.19(f).

⁴¹ See proposed Rule 21.22, Interpretation and Policy .01. This provision is the same as the corresponding provision for simple AIM. See Rule 21.19, Interpretation and Policy .01.

³⁵ See Rule 21.20(d).

³⁶ See Rule 21.20(d)(7).

deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 3.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures contained in proposed paragraph (e) above.⁴²

Rule 22.12 prevents an Options Member from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Options Member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Options Member to establish a relationship with a Priority Customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It would be a violation of Rule 22.12 for an Options Member to circumvent such rule by providing an opportunity for (a) a Priority Customer affiliated with the Options Member, or (b) a Priority Customer with whom the Options Member has an arrangement that allows the Options Member to realize similar economic benefits from the transaction as the Options Member would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as Customer-to-Customer C-AIM Immediate Crosses pursuant to proposed paragraph (f) of this Rule.⁴³ In addition to proposed Interpretation and Policy .03, the Exchange proposes to amend Rule 22.12(c) to add reference to C-AIM as an exception to the general restriction on the execution of orders as principal against orders they represent as agent.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Section 6(b) of the Act.⁴⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to add certain system functionality currently offered by Cboe Options to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. This will provide Users with greater harmonization of price improvement auction mechanisms available among the Cboe Affiliated Exchanges.

The proposed rule change will provide market participants with access to an auction mechanism for execution of complex orders, which will provide them with greater flexibility in pricing complex orders and may provide more opportunities for price improvement. C-AIM as proposed will function in a substantially similar manner as AIM for simple orders, the Exchange's current price improvement mechanism—the proposed differences relate primarily to basing the price and execution of the Agency Order on the SBBO and the COB, rather than on the NBBO, and to ensure execution prices are consistent with complex order priority principles. C-AIM provides equal access to the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds will have the opportunity to interact with orders submitted into C-

AIM Auctions.⁴⁷ C-AIM will benefit investors, because it is designed to provide investors seeking to execute complex orders with opportunities to access additional liquidity and receive price improvement. It will provide Options Members with a facility in which to execute customers' complex orders, potentially at improved prices. The proposed rule change may result in increased liquidity available at improved prices for complex orders, with competitive final pricing out of the Initiating Member's control. The Exchange believes C-AIM will promote and foster competition and provide more options contracts with the opportunity for price improvement.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because other options exchanges similarly permit complex orders to be submitted into their price improvement auctions.⁴⁸ The general framework of the proposed C-AIM Auction process (such as the eligibility requirements, the auction response period, the same-side stop price requirements, response requirements, and auction notification process),⁴⁹ is substantively the same as the framework of the AIM Auction for simple orders, except to account for the differences between simple and complex orders, as described above. The Exchange believes using the same general framework for the simple and complex auctions will benefit investors, as it will minimize confusion regarding how the auction mechanisms work.

Further, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic complex order price improvement mechanism, while providing an opportunity for price improvement for Agency Orders and ensuring that Priority Customers on the Simple Book and the COB are protected. C-AIM Auction functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

⁴⁷ Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

⁴⁸ See, e.g., Cboe Options Rule 6.74A, Interpretation and Policy .08; Nasdaq ISE LLC ("ISE") Rule 723(e); Nasdaq PHLX LLC ("PHLX") Rule 1087; BOX Exchange LLC ("BOX") Rule 7245; and Miami International Securities Exchange, LLC ("MIAX") Rule 515A, Interpretation and Policy .12.

⁴⁹ See Rule 21.19.

⁴² See proposed Rule 21.22, Interpretation and Policy .02. This provision is the same as the corresponding provision for simple AIM. See Rule 21.19, Interpretation and Policy .02.

⁴³ See proposed Rule 21.22, Interpretation and Policy .031 [sic]. This provision is the same as the corresponding provision for simple AIM. See Rule 21.19, Interpretation and Policy .03.

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(b)(5).

⁴⁶ *Id.*

The Exchange believes the proposed rule change will result in efficient trading and reduce the risk for investors that seek access to additional liquidity and price improvement for complex orders by providing additional opportunities to do so. The proposed priority and allocation rules in the C-AIM Auction are consistent with the Exchange's current complex order priority principles, pursuant to which complex orders may only trade against complex interest at prices that improve the BBO of any component that is represented by a Priority Customer order.⁵⁰ This will ensure a fair and orderly market by protecting Priority Customer orders on the Simple Book while still affording the opportunity for price improvement for complex orders during each C-AIM Auction commenced on the Exchange. The proposed allocation is also consistent with the allocation principles for the simple AIM Auction, which ensures protection of Priority Customer orders resting on the COB.⁵¹ In a simple AIM Auction, Priority Customer orders receive priority, including over the Initiating Order's guaranteed participation. Similarly, in a C-AIM Auction, Priority Customer complex orders receive priority, including over the Initiating Order's guaranteed participation.

The purpose of C-AIM is to provide a facility for Options Members that locate liquidity for their customer orders to execute these orders (and potentially obtain better prices). An Initiating Member that provides or locates interest to execute against its customer orders at the best then-available price (or better) will receive in exchange for that effort execution priority over non-Priority Customers (who do not expend similar efforts to trade against the Agency Order and do not provide price improvement) to trade against a specified percentage of the Agency Order at the stop price. The Exchange believes the proposed rule change promotes just and equitable principles of trade, because it will protect Priority Customer complex orders resting on the COB while encouraging Options Members to continue to provide or locate liquidity against which their customers may execute their complex orders. The Exchange believes this may also encourage non-Priority Customers to submit interest at improved prices if they seek to execute against Agency Orders.

By keeping the priority and allocation rules for a C-AIM Auction similar to the allocation used for a simple AIM Auction on the Exchange, consistent with current complex order priority, and consistent across possible outcomes of a C-AIM Auction, the proposed rule change reduces the ability of market participants to misuse the C-AIM Auction to circumvent standard priority rules in a manner that is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade on the Exchange. The proposed execution and priority rules will allow orders to interact with interest in the COB, and will allow interest on the COB to interact with option orders in the price improvement mechanisms in an efficient and orderly manner. The Exchange believes this interaction of orders will benefit investors by increasing the opportunity for complex orders to receive executions, while also enhancing the execution quality for orders resting on the COB.

The proposed C-AIM Auction eligibility requirements are reasonable and promote a fair and orderly market and national market system, because they are the same as the eligibility requirements for a simple AIM Auction, except the proposed rule change excludes the requirement related to the NBBO, because there is no NBBO for complex orders, and the legs of complex orders are not subject to the restriction on NBBO trade-throughs. Additionally, the proposed rule change references the opening of the COB rather than the market open, as the opening of the COB is when complex orders may begin trading. These are minor differences that relate solely to underlying differences between simple and complex orders.

The proposed rule that an Initiating Member may not designate an Agency Order or Initiating Order as Post Only protects investors, because it provides transparency regarding functionality that will not be available for C-AIM. The Exchange believes this is appropriate, as the purpose of a Post Only complex order is to not execute upon entry and instead rest in the COB, while the purpose of submitting orders to a C-AIM Auction is to receive an execution following the auction and not enter the COB. Pursuant to proposed Rule 21.22, an Agency Order will fully execute against contra-side interest (the Initiating Order, other contra-side complex interest, or a combination of both), and thus there cannot be remaining contracts in an Agency Order to enter the COB. Similarly, the Initiating Order may only execute against the Agency Order at the

conclusion of a C-AIM Auction, and thus will not enter the COB.

The Exchange believes the proposed rule change to permit the Initiating Order to be comprised of multiple orders that total the size of the Agency Order may increase liquidity and opportunity for Agency Orders to participate in C-AIM Auctions, and therefore provide Agency Orders with additional opportunities for price improvement, which is consistent with the principles behind the C-AIM Auction. The Exchange believes this will be beneficial to participants because allowing multiple contra-parties should foster competition for filling the contra-side order and thereby result in potentially better prices, as opposed to only allowing one contra-party, which would require that contra-party to guarantee the entire Agency Order, which could result in a worse price for the trade. The Initiating Order for simple AIM Auctions may be comprised of multiple contra-parties.⁵²

The proposed C-AIM Auction requirements for the stop price are reasonable and promote a fair and orderly market and national market system, because they are consistent with the corresponding requirements for a simple AIM Auction (including the options for a single-price submission and auto-match), except the proposed requirements are based on the SBBO and complex order prices in the COB rather than the NBBO. As noted above, there is no NBBO for complex orders. The proposed stop price requirements promote just and equitable principles of trade, because they protect Priority Customer orders in the Simple Book and Priority Customer complex orders in the COB, and prevent trading through the SBBO and the best-priced orders on the COB.

As discussed above, the Exchange has proposed to allow C-AIM Auctions to occur concurrently with other C-AIM Auctions for the same complex strategies. Although C-AIM Auctions for Agency Orders will be allowed to overlap, the Exchange does not believe this raises any issues that are not addressed through the proposed rule change described above. For example, although overlapping, each C-AIM Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two C-AIM Auctions in the same complex strategy that commence and conclude, at nearly the same time, each C-AIM Auction will have a distinct conclusion at which time the C-AIM Auction will be allocated. In turn, when the first C-

⁵⁰ See proposed Rule 21.22(e)(5) and current Rule 21.20(c)(3).

⁵¹ See Rule 21.19(e).

⁵² See Rule 21.19.

AIM Auction concludes, unrelated orders that then exist will be considered for participation in the C-AIM Auction. If unrelated orders are fully executed in such C-AIM Auction, then there will be no unrelated orders for consideration when the subsequent C-AIM Auction is processed (unless new unrelated order interest has arrived). If instead there is remaining unrelated order interest after the first C-AIM Auction has been allocated, then such unrelated order interest will be considered for allocation when the subsequent C-AIM Auction is processed. As another example, each C-AIM response is required to specifically identify the Auction for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, C-AIM responses will be specifically considered only in the specified C-AIM Auction.

The Exchange does not believe that allowing multiple auctions to overlap for Agency Orders presents any unique issues that differ from functionality already in place on the Exchange. Pursuant to Rule 21.19(c)(1), multiple AIM Auctions for Agency Orders for 50 or more contracts may overlap. Different complex strategies are essentially different products, as orders in those strategies cannot interact, just as orders in different series or classes cannot interact. Therefore, the Exchange believes concurrent C-AIM Auctions in different complex strategies is appropriate given that concurrent simple AIM Auctions in different series or different classes may occur. Similarly, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the ratio of the complex strategy. A simple order in one component of a complex strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent AIM and C-AIM Auctions in the same component. As proposed, C-AIM Auctions will ensure that Agency Orders execute at prices that protect Priority Customer orders in the Simple Book and that are not inferior to the SBBO, even when there are concurrent simple and complex auctions occurring. The proposed rule change sets forth how any auctions with overlapping components will conclude if terminated due to the same event. The Rules do not currently prevent a COA in a complex strategy from occurring at the same time as an AIM in one of the components of the complex strategy. Therefore, the Exchange believes it is similarly

reasonable to permit a C-AIM in a complex strategy to occur at the same time as an AIM in one of the components of the complex strategy.

The proposed auction process will promote a free and open market, because it ensures equal access to information regarding C-AIM Auctions and the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds with the opportunity to interact with orders submitted into C-AIM Auctions.⁵³ The proposed auction notification message includes the same information as the auction notification message for simple AIM Auctions, and will be available in the same data feed. The Exchange has proposed a range between no less than 100 milliseconds and no more than one second for the duration of a C-AIM Auction, which is the same duration of a simple AIM Auction. This will provide investors with more timely execution of their complex orders, while ensuring there is an adequate exposure of complex orders. This proposed auction response time should provide investors with the opportunity to receive price improvement for complex orders through C-AIM while reducing market risk. The Exchange believes a briefer time period reduces the market risk for the Initiating Member, versus an auction with a longer period, as well as for any Options Member providing responses to a broadcast. As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors and the public interest. All Options Members will have an equal opportunity to respond with their best prices during the C-AIM Auction. Since the Exchange considers all complex interest present in the System, and not solely C-AIM responses, for execution against the Agency Order, those participants who are not explicit responders to a C-AIM Auction may receive executions via C-AIM as well.

The proposed C-AIM Auction response requirements are reasonable and promote a fair and orderly market and national market system, because they are virtually identical to the corresponding requirements for a simple AIM Auction and benefit investors by providing clarity regarding how they may respond to a C-AIM Auction. The only differences are the proposed rule change does not explicitly prohibit FOK, because it is never available for

complex orders (and thus would not be available for C-AIM responses), C-AIM responses will be aggregated with other complex size rather than other simple interest, and C-AIM responses will be capped at the SBBO or prices of complex orders rather than the NBBO (because, as discussed above, there is no NBBO for complex orders and restricting prices based on the SBBO and complex orders will ensure protection of Priority Customer orders). This will further benefit investors by providing consistency across the Exchange's price improvement mechanisms.

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, because it is consistent with linkage rules. Rule 27.2(b)(8) provides that a transaction that is effected as a portion of a complex trade is exception to the prohibition on effecting trade-throughs. As discussed above, any executions following a C-AIM Auction will not trade-through the SBBO or prices of complex orders resting on the COB (and will always improve the SBBO or COB prices if they consist of a Priority Customer order).

The proposed events that will conclude a C-AIM Auction are reasonable and promote a fair and orderly market and national market system, because they are consistent with the corresponding events that will conclude a simple AIM Auction, and benefit investors by providing clarity regarding what will cause a C-AIM Auction to conclude. These events would create circumstances under which a C-AIM would not have been permitted to start, and thus the Exchange believes it is appropriate to conclude a C-AIM Auction if those circumstances occur. As is the case with a simple AIM Auction (which will not conclude early due to the receipt of an opposite side simple order), the Exchange will not conclude a C-AIM Auction early due to the receipt of an opposite side complex order. The Exchange believes this promotes just and equitable principles of trade, because these orders may have the opportunity to trade against the Agency Order following the conclusion of the C-AIM Auction, which execution must still be at or better than the SBBO and prices of complex orders in the COB. The Exchange believes this will protect investors, because it will provide more time for price improvement, and the unrelated order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side complex interest.

⁵³ Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

With respect to trading halts, as described above, in the case of a trading halt on the Exchange in the affected complex strategy or any component series, the C-AIM Auction will be cancelled without execution. This is consistent with simple AIM, which will be cancelled without execution if there is a trading halt on the Exchange in the affected series. Cancelling C-AIM Auctions without execution in this circumstance is consistent with Exchange handling of trading halts in the context of continuous trading on EDGX Options and promotes just and equitable principles of trade and, in general, protects investors and the public interest.⁵⁴

The Exchange believes the proposed execution of Agency Orders at the conclusion of a C-AIM Auction are reasonable and promote a fair and orderly market and national market system, because they are consistent with the execution of Agency Orders at the conclusion of a simple AIM Auction. Similar to the allocation that occurs following a simple AIM Auction (which allocates contra-side simple interest in the same manner), best-priced contra-side interest executes against the Agency Order first, and Priority Customer complex orders will have first priority at each price level, followed by other contra-side complex interest. The proposed rule change provides for the Initiating Order to receive the same percentage entitlement at the stop price, and also allows the Initiating Member to receive last priority, or auto-match at prices better than the stop price. The proposed rule change does not adopt Priority Order status for C-AIM, which is only available in simple AIM for classes the Exchange designates.

As noted above, there would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C-AIM Auction⁵⁵ and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality

available to Options Members. The proposed rule change will ensure the Agency Order executes in accordance with the C-AIM allocation principles (which are consistent with AIM allocation principles), which provide Priority Customers with priority but also provide for the Initiating Order to execute against a certain portion of the Agency Order, as well as provide Initiating Members with flexibility to auto-match executions at multiple price levels. The Exchange believes providing this functionality will encourage Options Members to submit complex orders into C-AIM Auctions and provide customer orders with opportunities for price improvement. It will also ensure orders (including Priority Customer orders) on the Simple Book are protected in accordance with current complex order priority principles,⁵⁶ as an Agency Order will only be permitted to execute at prices that do not trade at the SBBO existing at the conclusion of the C-AIM Auction if it includes a Priority Customer order at the BBO on any leg, and that do not trade through the SBBO existing at the conclusion of the C-AIM Auction.⁵⁷ The proposed allocation will also ensure the Agency Order does not trade at the same price as a Priority Customer complex order resting on the COB or through the best-priced complex orders on the COB, and will protect investors by providing Priority Customer complex orders with priority at each price level.

The proposed Customer-to-Customer C-AIM Immediate Cross functionality is reasonable and will promote a fair and orderly market and national market system, because it is consistent with the corresponding Customer-to-Customer AIM Immediate Cross functionality. Similar to above, the pricing restrictions for Customer-to-Customer C-AIM Immediate Cross are based on the SBBO and complex orders in the COB rather than the NBBO (as is the case for Customer-to-Customer AIM Immediate Cross). The proposed pricing restrictions will ensure that the transaction price for Customer-to-Customer C-AIM Immediate Crosses may not be at the same price as any Priority Customer complex orders resting on the COB or at the SBBO if the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, and thus at a price at least as good as the price at which the orders would have executed had they been submitted separately to the COB. The proposed functionality

will benefit investors, because it will enhance and automate order entry firms' ability to submit two contra-side side [sic] customer complex orders. The proposed rule change will provide Options Member [sic] with a more efficient means of executing their customer complex orders (in the same efficient manner in which they may currently execute their customer simple orders) subject to the Exchange's existing requirements limiting principal transactions.

As is the case with AIM, an Options Member may not use C-AIM to create a misleading impression of market activity (*i.e.*, C-AIM may only be used where there is a genuine intention to execute a bona fide transaction). The proposed regulatory provisions are substantially the same as those applicable to simple AIM, and the Exchange believes they will protect customers and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

The proposed rule change is also consistent with Section 11(a)(1) of the Act⁵⁸ and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (a) the member's own account, (b) the account of a person associated with the member, or (c) an account over which the member or a person associated with the member exercises discretion (collectively referred to as "covered accounts"), unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),⁵⁹ the "G" exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder,⁶⁰ and "Effect vs. Execute" exemption under Rule 11a2-2(T) under the Act.⁶¹ The "Effect vs. Execute" exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)'s

⁵⁴ The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market and other circumstances. See Rule 20.3.

⁵⁵ The Exchange notes it currently does not permit all-or-none ("AON") orders to leg into the Simple Book following a COA due to the same technical complexities.⁵⁵ [sic] While an Agency Order is not submitted as an AON order, an Agency Order, like an AON order, must execute in its entirety or not at all and thus effectively functions like an AON Order. See Rule 21.1(d)(4). Therefore, the Exchange believes it is similarly appropriate to not leg Agency Orders into the Simple Book at the conclusion of a C-AIM Auction.

⁵⁶ See proposed Rule 21.22(e)(5) and current Rule 21.20(c)(3).

⁵⁷ See Rule 21.20(c)(2)(E) and (d)(6).

⁵⁸ 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

⁵⁹ 15 U.S.C. 78k(a)(1)(A).

⁶⁰ 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1-1(T).

⁶¹ 17 CFR 240.11a2-2(T).

conditions, a member: (a) Must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;⁶² (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Exchange Members entering orders into a C-AIM Auction would satisfy the requirements of Rule 11a2-2(T).

The Exchange does not operate a physical trading floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.⁶³ The Exchange represents that the System and the proposed C-AIM Auction receive all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders for covered accounts from Options Members will be transmitted from a remote location directly to the proposed C-AIM mechanism by electronic means.

The second condition of Rule 11a2-2(T) requires that neither a member nor an associated person participate in the execution of its order once the order is transmitted to the floor for execution. The Exchange represents that, upon submission to the C-AIM Auction, an order or C-AIM response will be executed automatically pursuant to the rules set forth for C-AIM. In particular, execution of an order (including the Agency Order and the Initiating Order) or a C-AIM response sent to the mechanism depends not on the Options Member entering the order or response,

but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is an Options Member able to acquire control or influence over the result or timing of order or response execution.⁶⁴ Once the Agency Order and Initiating Order have been transmitted, the Initiating Member that transmitted the orders will not participate in the execution of the Agency Order or Initiating Order. Initiating Members submitting Agency Orders and Initiating Orders will relinquish control to modify or cancel their Agency Orders and Initiating Orders upon transmission to the System. Further, no Options Member, including the Initiating Member, will see a C-AIM response submitted into C-AIM, and therefore and will not be able to influence or guide the execution of their Agency Orders, Initiating Orders, or C-AIM responses, as applicable. Finally, the last priority feature will not permit an Options Member to have any control over an order. The election to apply last priority to an Initiating Order is available prior to the submission of the order and therefore could not be utilized to gain influence or guide the execution of the Agency Order. The information provided with respect to the last priority feature by the Initiating Member will not be broadcast and further, the information may not be modified by the Initiating Member during the Auction [sic].

Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the C-AIM Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁶⁵ The Exchange

represents that the C-AIM Auction is designed so that no Options Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.⁶⁶ The Exchange recognizes that Options Members relying on Rule 11a2-2(T) for transactions effected through the C-AIM Auction must comply with this condition of the Rule and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

The Exchange believes that the instant proposal is consistent with Rule 11a2-2(T), and that therefore the exception should apply in this case.

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, because it is consistent with linkage rules. Rule 27.2(b)(8) provides that a transaction that is effected as a portion of a complex trade is exception to the prohibition on effecting trade-throughs. As discussed above, any executions following a C-AIM Auction

execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

⁶⁶ See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. See also 1978 Release (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

⁶² The member may, however, participate in clearing and settling the transaction.

⁶³ See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SRBSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

⁶⁴ An Initiating Member may not cancel or modify an Agency Order or Initiating Order after it has been submitted into C-AIM. See proposed Rule 21.22(c)(4). Options Members may modify or cancel their responses after being submitted to into a C-AIM. See proposed Rule 21.22(d)(5)(H). The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the "1978 Release").

⁶⁵ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the

will not trade-through the SBBO or prices of complex orders resting on the COB (and will always improve the SBBO or COB prices if they consist of a Priority Customer order).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted to a C-AIM Auction. The proposed C-AIM Auction is voluntary for Options Members to use and will be available to all Options Members. As discussed above, the Exchange believes the proposed rule change should encourage Options Members to compete amongst each other by responding with their best price and size for a particular auction. By offering all Options Members the ability to participate in the proposed allocation during the C-AIM Auction, an Options Member will be encouraged to submit complex orders outside of the C-AIM Auction at the best and most aggressive prices. Within the C-AIM Auction, the Exchange believes the proposed rule change will encourage Options Member [sic] to compete vigorously to provide the opportunity for price improvement in a competitive auction process. The proposed execution and allocation rules are consistent with those applicable to simple AIM, as well as complex order priority, and therefore will ensure protection of Priority Customer orders in both the Simple Book and the COB.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, because other options exchanges offer similar complex order price improvement auctions.⁶⁷ The general framework and primary features of the proposed C-AIM Auction process (such as the eligibility requirements, auction response period, response requirements, and auction notification process),⁶⁸ are substantively the same as the framework for simple AIM. The auction process is also similar, and is modified to address the underlying differences between simple and complex orders. For example, C-AIM will base pricing and

execution requirements on the SBBO and complex orders in the COB, rather than the NBBO (which does not apply to complex orders), to ensure consistency with Priority Customer priority and complex order priority principles.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various options exchanges. The Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business and compete on equal footing with those options exchanges with complex order price improvement auctions and for this reason the proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or 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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2019-028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2019-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-028, and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10125 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

⁶⁷ See, e.g., Cboe Options Rule 6.74A, Interpretation and Policy .08; ISE Rule 723(e); PHLX Rule 1087; BOX Rule 7245; and MIAX Rule 515A, Interpretation and Policy .12.

⁶⁸ See Rule 21.19.

⁶⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85840; File No. SR-CboeBZX-2019-041]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Amending Its Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Equities”) proposes to amend its fee schedule assessed on Members to establish a monthly Trading Rights Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly Trading Rights Fee under the “Membership Fees” section of the fee schedule. The Trading Rights Fee will be assessed on Members that trade more than a specified volume in U.S. equities, and will assist in covering the cost of regulating the Exchange and its Members. Specifically, the Exchange proposes to charge Member firms a monthly Trading Rights Fee of \$500 per month for the ability to trade on the Exchange. So as to continue to encourage active participation on the Exchange by smaller Members, the Trading Rights Fee would not be charged to Members with a monthly ADV⁴ of less than 100,000 shares. Similarly, to continue to support individual investor order flow on the Exchange, the Trading Rights Fee would not be charged to Members in which at least 90% of their orders submitted to the Exchange per month are retail orders.

Additionally, the Exchange recognizes that new Members are new and important sources of liquidity. As such, the Exchange proposes that new Exchange Members will not be charged the proposed Trading Rights Fee for their first three months of Membership. Moreover, for any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee will be pro-rated in accordance with the date on which Membership is approved. For example, if a firm’s Membership is approved on May 15, 2019, then, as proposed, it would not be charged for its first three months of Membership. The month of August would then be pro-rated and the Trading Rights Fee would be assessed from August 15, 2019 through the end of the month. During any month in which a firm terminates Membership with the Exchange, the monthly Trading Rights Fee will not be pro-rated.

As proposed, the Exchange believes the Trading Rights Fee assessed aligns with the benefit provided by allowing Members to trade on an efficient and well-regulated market. The proposed Trading Rights Fee will fund a portion

of the cost of regulating and maintaining the Exchange’s equities market. Lastly, the Exchange believes the cost of Exchange Membership, including the proposed Trading Rights Fees, is significantly lower than the cost of membership in a number of other SROs.⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed Trading Right Fee is reasonable because the fee will assist in funding the overall regulation and maintenance of the Exchange. Additionally, the Exchange believes the fee is reasonable because the cost of this membership fee is generally less than the analogous membership fees of other markets. For example, the Exchange’s proposed Trading Rights Fee at \$500 a month is substantially lower than the NASDAQ Stock Market’s (“Nasdaq”) analogous fee, which assesses a monthly Trading Rights Fee of \$1,250 per member.

In addition to this, the Exchange believes that not charging a Trading Rights Fee for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it ensures that smaller Members who do not trade significant volume on BZX Equities can continue to trade on the Exchange at a lower cost. The Exchange believes that not charging a fee for such Members is reasonable because smaller Members with lower volumes executed on the Exchange consume fewer regulatory resources. The Exchange also believes that not charging a Trading Rights Fee for Members that submit 90% or more of their orders per month as retail orders

⁵ See NASDAQ Stock Market Equity Rules, Equity 7, Sec. 10(a) (assessing a trading rights fee of \$1,250 per month per each member); New York Stock Exchange Price List 2019, “Trading Licenses” (assessing an annual fee \$50,000 for the first trading license held by a member, to which the Exchange notes that the Exchange assesses a \$2,500 annual fee for membership, and that this annual fee coupled with 12 months of the proposed Trading Rights Fees remains substantially lower than NYSE’s annual trading license fee).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the Exchange initially filed the proposed rule change on April 29, 2019 (SR-CboeBZX-2019-036). On May 2, 2019, the Exchange withdrew that filing and submitted this filing.

⁴ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

is reasonable because it ensures retail broker Members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange. Furthermore, continuing to allow smaller Members and retail broker Members to trade on the Exchange without incurring a Trading Rights Fee may encourage additional participation from such Members and thereby contribute to a more diverse and competitive market for equity securities traded on the Exchange.

Additionally, the Exchange believes that not charging its new Members the proposed Trading Rights Fee for their first three months of Membership is reasonable because it provides an incentive for firms and other participants that are not currently Members of the Exchange to apply for Membership and bring additional liquidity to the market to the benefit of all market participants. The Exchange believes that not charging a Trading Rights Fee for new Members will incentivize firms to become Members of the Exchange. The Exchange believes creating incentives for new Exchange Members protects investors and the public interest by increasing the competition and liquidity across the Exchange.

The Exchange believes that the proposed Trading Rights Fee is equitable and is not unfairly discriminatory because it will apply equally to all Members with an ADV of 100,000 shares or more traded per month and all Members in which less than 90% of their orders are submitted as retail orders per month.⁸ The Exchange believes that not charging the Trading Rights Fee for Members that do not meet these thresholds in a month is not unfairly discriminatory as it is designed to reduce the costs of smaller Members and retail-based Members that transact on the Exchange. Furthermore, the Exchange believes that not charging a Trading Rights Fee for a new Member for the first three months of Membership is equitable and not unfairly discriminatory because the proposed waiver will be offered to all market participants that wish to become Members of the Exchange. As stated, the proposed waiver intends to incentivize new Membership which will bring increased liquidity and competition to the benefit of all market participants. In

addition to this, the Exchange notes that the proposed fee is equitable and not unfairly discriminatory because it will contribute revenue to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed rule change will apply equally to all Members that reach an ADV of 100,000 shares traded or greater, and those that submit less than 90% of their orders as retail orders per month. Although smaller Members would be excluded from the Trading Rights Fee, the Exchange believes that this may increase competition by encouraging additional order flow from such smaller Members thereby contributing to a more diverse, vibrant, and competitive market. Additionally, while the proposed three month waiver of the Trading Rights Fee only applies to new Members, new Members can be an important source of liquidity and facilitate competition within the market, which uniformly benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange operates in a highly competitive environment in which market participants can readily favor competing exchanges and marketplaces if they deem fee levels at a particular exchange or other venue to be excessive. If the proposed fee increase is unattractive to members, it is likely that the Exchange will lose membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, and in covering costs associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. The Exchange notes that

competitors are free to modify their own fees in response to its proposal, and because Members are not compelled to be Members of the Exchange and may trade on numerous other exchanges and other alternative venues, the Exchange believes that the proposed fee change will not impose a burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-041. This file number should be included on the subject line if email is used. To help the Commission process and review your

⁸ A Member will not be charged if it meets either one (or both) of the exceptions. To illustrate, if a Member submits 5% of its orders as retail orders but only has an ADV of 90,000 shares traded, that Member will not be charged the proposed Trading Rights Fee.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-041 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10119 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85839; File No. SR-EMERALD-2019-20]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees

May 10, 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 April 30, 2019, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change

as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the "Fee Schedule") to adopt the Exchange's system connectivity fees.

The Exchange initially filed the proposal on March 1, 2019 (SR-EMERALD-2019-11). That filing has been withdrawn and replaced with the current filing (SR-EMERALD-2019-20).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit ("Gb") fiber connection and the 10Gb ultra-low latency ("ULL") fiber connection, which are charged to both Members³ and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for

connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the "Shared Connections"), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC ("MIAX") and MIAX PEARL, LLC ("MIAX PEARL"). The 10Gb ULL connection is a dedicated connection ("Dedicated Connection"), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the "Proposed Fees." The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.⁴ While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.⁵ The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.⁶ The First Proposed Rule Change provided information about the market participants impacted

⁴ See SR-MIAX-2019-23 and SR-PEARL-2019-17 (the "MIAX and PEARL Fee Filings").

⁵ See Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR-EMERALD-2019-11) (the "First Proposed Rule Change").

⁶ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

by the Proposed Fees, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the "BOX Order").⁷ In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC ("BOX") to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the First Proposed Rule Change.⁸

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the Proposed Fees. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and

services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the First Proposed Rule Change. Despite the objection to the Proposed Fees, the IEX Letter did find that "MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases."⁹ The IEX Letter specifically argued that the Proposed Fees were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX Emerald and its affiliates considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the First Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fees. Specifically, the Second Healthy Markets Letter stated that the First Proposed Rule Change was "remarkably different," and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.¹⁰

On April 29, 2019, the Exchange withdrew the First Proposed Rule Change.¹¹ The Exchange is now re-filing the Proposed Fees to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fees are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange proposes to offer to both Members and non-Members various bandwidth alternatives for

connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange also proposes to offer to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its disaster recovery facility, consisting of a 1Gb fiber connection and a 10Gb connection.

For the Shared Connections, the Exchange's MIAX Express Network Interconnect ("MENI") can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, via a single, shared connection. Any Member or non-Member can purchase a Shared Connection.

For the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect.

For the Shared Connections, Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange, MIAX, and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. Thus, since all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections, most Members of MIAX Emerald have instant connectivity to the Exchange without paying any new incremental

⁷ See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04).

⁸ See Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 ("MIAX Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("Second SIFMA Letter"); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("IEX Letter"); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 ("Second Healthy Markets Letter").

⁹ See IEX Letter, pg. 1.

¹⁰ See Second Healthy Markets Letter, pg. 2.

¹¹ See SR-EMERALD-2019 11.

connectivity fees, as more fully-detailed below.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Members and non-Members. As discussed above, the amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL. The amount of the Proposed Fee for the Dedicated Connection is offered at a substantial discount to the amount currently in place at MIAX and MIAX PEARL. The reason for the substantial discount is that the Dedicated Connection offers access to only a single market (the Exchange), whereas the 10Gb ULL connection offered by MIAX and MIAX PEARL offers access to two markets (MIAX and MIAX PEARL). The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be as follows: (a) 1,400 for the 1Gb connection; and (b) \$6,000 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be as follows: (a) \$550 for the 1Gb connection; and (b) \$2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fees are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed, are competitive and market-driven. The U.S. options markets are highly

competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX Emerald as compared to the much greater number of members at other options exchanges (as further detailed below). MIAX Emerald is a brand new exchange, having only commenced operations in March 2019. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. Further, of the number of Members that connect directly to MIAX Emerald, many such Members do not purchase market data from MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchanges but not Members of MIAX Emerald. For example, the following are not Members of MIAX Emerald: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX Emerald, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities

markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX Emerald or its affiliates, MIAX and MIAX PEARL, they do not purchase connectivity to MIAX Emerald, and they do not purchase market data from MIAX Emerald. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX Emerald, the Exchange provides information about the Exchange's available connectivity alternatives.¹⁵ The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase a 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX Emerald notes that there are twelve (12) Members that only

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See the MIAX Connectivity Guide at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.

purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAx Emerald and its affiliates. MIAx Emerald competes with eight (8) non-Members, who resell MIAx Emerald connectivity. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAx Emerald (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAx Emerald does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAx Emerald to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. In fact, there are currently seven (7) non-Members that purchase 1Gb direct connectivity that are able to access MIAx Emerald, MIAx and MIAx PEARL. Those non-Members resell that connectivity to eight (8) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eight (8) customers also purchase connectivity directly from MIAx Emerald and/or its affiliates, MIAx and MIAx PEARL. Accordingly, indirect connectivity is a viable alternative used by non-Members of MIAx Emerald, constraining the price that MIAx Emerald is able to charge for connectivity to its Exchange.

The Exchange,¹⁶ MIAx,¹⁷ and MIAx PEARL¹⁸ are comprised of 41 distinct members amongst all three exchanges, excluding any additional affiliates of such members that are also members of the Exchange, MIAx, MIAx PEARL, or any combination thereof. Of those 41 distinct members, 28 of those distinct members are Members of MIAx

Emerald. (Currently, there are no Members of MIAx Emerald that are not also members of MIAx or MIAx PEARL, or both.) Of those 28 distinct Members of MIAx Emerald, there are 6 Members that have no connectivity to the Exchange. Members are not forced to purchase connectivity to the Exchange, and these Members have elected not to purchase such connectivity. Of note, these same 6 Members also do not have connectivity to either MIAx or MIAx PEARL. These Members either trade indirectly through other Members or non-Members that have connectivity to the Exchange, or do not trade and conduct another type of business on the Exchange. Of the remaining 22 distinct Members of MIAx Emerald, *all 22* of those distinct Members already had connectivity to the Exchange via existing Shared Connections, thus providing all such 22 MIAx Emerald Members with instant connectivity to the Exchange without paying any new incremental connectivity fees.

Further, of those 22 Members, 14 of such Members elected to purchase additional connectivity to the Exchange, including additional Shared Connections and additional Dedicated Connections. The Exchange made available in advance to all of its prospective Members its proposed connectivity pricing (subject to regulatory clearance), in order for those prospective Members to make an informed decision about whether to become a Member of the Exchange and whether to purchase connectivity to the Exchange. Accordingly, each such Member made the decision to become a Member of the Exchange and to purchase connectivity to the Exchange, knowing in advance the connectivity pricing. And the vast majority of the additional connectivity purchased by those Members were for Dedicated Connections, the most expensive connectivity option.

As a result, of those 22 Members, through existing Shared Connections, newly purchased Shared Connections, and newly purchased Dedicated Connections: 14 Members have 1Gb (primary/secondary) connections; 13 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 10 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. All such Members with those Shared Connections and Dedicated Connections trade on MIAx Emerald.

The 6 Members who have not purchased any connectivity to the Exchange are still able to trade on the

Exchange indirectly through other Members or non-Member service bureaus that are connected. These 6 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

In addition, there are 5 non-Member service bureaus that already have connectivity to the Exchange via existing Shared Connections, thus providing all 5 of those non-Member service bureaus with instant connectivity to the Exchange without paying any new incremental connectivity fees. These non-Members freely purchased their connectivity from one of the Exchange's affiliates, either MIAx or MIAx PEARL, in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

The Exchange believes that the Proposed Fees are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers two direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAx Emerald recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb ULL direct connectivity alternative. Approximately just less than half of MIAx Emerald, MIAx and MIAx PEARL Members that connect (15 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network.

Accordingly, the Exchange believes the allocation of the Proposed Fees (\$6,000 for a 10Gb ULL connection versus \$1,400 for a 1Gb connection) are

¹⁶ The Exchange has 28 distinct Members, excluding affiliated entities. See MIAx Emerald Exchange Member Directory, available at <https://www.miaxoptions.com>.

¹⁷ MIAx has 38 distinct Members, excluding affiliated entities. See MIAx Exchange Member Directory, available at <https://www.miaxoptions.com>.

¹⁸ MIAx PEARL has 36 distinct Members, excluding affiliated entities. See MIAx PEARL Exchange Member Directory, available at <https://www.miaxoptions.com>.

reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange.

The Exchange launched trading on March 1, 2019. Thus, at the time that the 14 Members who elected to purchase connectivity to the Exchange, the Exchange was untested and unproven, and had 0% market share of the U.S. options industry. For all of 2018, the Exchange's affiliate, MIAX, had only 4.39% market share of the U.S. options industry in Equity/ETF classes according to the OCC.¹⁹ For all of 2018, the Exchange's affiliate, MIAX PEARL, had only 4.82% market share of the U.S. options industry in Equity/ETF classes according to the OCC.²⁰ The Exchange is not aware of any evidence that a combined market share less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition. Certainly, an untested and unproven exchange, with 0% market share, and no rule or requirement that a market participant must join or connect to it, does not have anti-competitive pricing power, with respect to setting the pricing for the Dedicated Connections or the Shared Connections. If the Exchange were to attempt to establish unreasonable connectivity pricing, then no market participant would join or connect. Therefore, since 28 distinct Members joined MIAX Emerald and 14 of those distinct Members purchased additional connectivity to the Exchange, all knowing, in advance, the connectivity fees, the Exchange believes the Proposed Fees are reasonable, equitable, and not unfairly discriminatory.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the

Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX Emerald must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants are proposing to access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 34 total Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. ("Cboe") has over 200 members,²¹ Nasdaq ISE, LLC has approximately 100 members,²² and NYSE American LLC has over 80 members.²³ If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 34 Members.

Further, since there are 41 distinct members amongst all three exchanges, and only 28 of those distinct members decided to become Members of MIAX Emerald, there were 13 distinct members that decided *not* to become Members of MIAX Emerald. This further reinforces the fact that all market participants are not required to be Members of the Exchange and are not required to connect to the Exchange. It is a choice whether to join and it is a choice to connect. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

With respect to the now MIAX Emerald Members that had Shared Connections in place as of August 1,

2018 (via a previously purchased Shared Connection from MIAX or MIAX PEARL), the Exchange finds it compelling that all of those Members continued to purchase those Shared Connections after August 1, 2018, when MIAX and MIAX PEARL increased the connectivity fees for the Shared Connections to the current amounts proposed by the Exchange herein. In particular, the Exchange believes that the Proposed Fees for the Shared Connections are reasonable because MIAX and MIAX PEARL, which charge the same amount for the Shared Connections, did not lose any Members (or the number of Shared Connections each Member purchased) or non-Member Shared Connections when MIAX and MIAX PEARL proposed to increase the connectivity fees for the Shared Connections on August 1, 2018. For example, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, 12 Members purchased 1Gb connections. The vast majority of those Members purchased multiple such connections, the number of connections depending on their throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same 12 Members purchased 1Gb connections. Furthermore, the total number of connections did not decrease from July to August.

Further, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when MIAX and MIAX PEARL increased its fees. Furthermore, the Exchange understands that MIAX and MIAX PEARL did not receive any official comment letters or complaints from any now Members of MIAX Emerald who had Shared Connections in place as of July 2018 regarding the increased fees regarding how the change was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the

¹⁹ See Exchange Market Share of Equity Products—2018, The Options Clearing Corporation, available at <https://www.theocc.com/webapps/exchange-volume>.

²⁰ *Id.*

²¹ See Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002831.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002833.pdf>); Form 1/A, filed July 24, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002781.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm>).

²² See Form 1/A, filed July 1, 2016 (<https://www.sec.gov/Archives/edgar/vpr/1601/16019243.pdf>).

²³ See <https://www.nyse.com/markets/american-options/membership#directory>.

Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fees are equitably allocated among Members and non-Members, as evidenced by the fact that the fees are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—14 Members have 1Gb (primary/secondary) connections; 14 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 11 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fees allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

The costs associated with making the network accessible to Exchange Members and non-Members, through the expansion associated with new Shared Connections and Dedicated Connections, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year in the past two years, and are projected to increase year-over-year in the future. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development ("R&D") efforts.

In order to provide more detail and to quantify the Exchange's costs, the Exchange notes that costs are associated with the infrastructure and headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs technology expenses

related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. Additionally, the Exchange incurred costs in the expansion/buildout of the network leading up to the launch of operations, and the network maintenance costs continue to increase year-over-year. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX Emerald and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX Emerald and its affiliates, including both primary/secondary sites and disaster recovery, was over \$30 million. The current annual operational expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) is approximately \$8.5 million. This does not include additional indirect expenses that the Exchange incurs that are allocated to the support of network infrastructure of the Exchange. As these operational expenses increase, MIAX Emerald and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the operational expense increases, since the initial phases of the buildout of the Exchange over two years ago include the following: With respect to the network, there has been an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately \$800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately \$500,000); an approximate 5% increase in vendor-

supplied dark fiber due to price increases and expanded capabilities (increase of approximately \$25,000); and a 30% increase in market data connectivity fees (increase of approximately \$200,000). Of note, regarding market data connectivity fee cost, this is the cost associated with MIAX Emerald consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX Emerald to effectively pay its competitors for this connectivity. There was also significant capital expenditures over this same period to upgrade and enhance the underlying technology components. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with the buildout, maintenance, and enhancement of its network infrastructure.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset costs such costs.

Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much

more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. As an example, in the last year, R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing network connectivity fees, as proposed herein. Overall, the Proposed Fees are projected to offset only a portion of the Exchange's network connectivity costs. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs.

The Exchange also believes its proposal to offer 10Gb ULL connections as dedicated connections furthers the objectives of Section 6(b)(5) of the Act²⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. In particular, for the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount

of equipment that the Exchange would have to purchase and to which the Members would have to connect. A dedicated 10Gb ULL connection does not offer any unfair advantage over a shared 10Gb ULL connection, as is being offered solely as a cost-saving measure to the Exchange and its Members.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC ("Phlx"), NYSE Arca, Inc. ("Arca"), NYSE American LLC ("NYSE American") and Nasdaq ISE, LLC ("ISE") all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.²⁵ The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities,²⁶ however the Exchange also notes that the Exchange's 10Gb ULL connection is dedicated solely to one market (the Exchange) whereas the Exchange believes that other exchanges offer a shared 10Gb ULL connection to multiple markets. While MIAX Emerald's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX Emerald believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX Emerald believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.²⁷

²⁵ See Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

²⁶ *Id.*

²⁷ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging \$3,000 for disaster recovery testing & relocation services); see also Cboe Exchange, Inc. ("Cboe") Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of \$2,000 for a 1Gb disaster recovery network access port and a monthly fee of \$6,000 for a 10Gb disaster recovery network access port).

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Emerald does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange has received no official comment letters or complaints from Members or others who connect to it that its Proposed Fees are negatively impacting or would negatively impact their abilities to compete with other market participants. Further, the Exchange is unaware of any assertion that its Proposed Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁸ and Rule 19b-4(f)(2)²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EMERALD-2019-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2019-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2019-20 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10118 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85841; File No. SR-CboeBYX-2019-009]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related To Amending its Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2019, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX Equities") proposes to amend its fee schedule assessed on Members to establish a monthly Trading Rights Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the Exchange initially filed the proposed rule change on April 29, 2019 (SR-CboeBYX-2019-006). On May 2, 2019, the Exchange withdrew that filing and submitted this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly Trading Rights Fee under the "Membership Fees" section of the fee schedule. The Trading Rights Fee will be assessed on Members that trade more than a specified volume in U.S. equities, and will assist in covering the cost of regulating the Exchange and its Members. Specifically, the Exchange proposes to charge Member firms a monthly Trading Rights Fee of \$250 per month for the ability to trade on the Exchange. So as to continue to encourage active participation on the Exchange by smaller Members, the Trading Rights Fee would not be charged to Members with a monthly ADV⁴ of less than 100,000 shares. Similarly, to continue to support individual investor order flow on the Exchange, the Trading Rights Fee would not be charged to Members in which at least 90% of their orders submitted to the Exchange per month are retail orders.

Additionally, the Exchange recognizes that new Members are new and important sources of liquidity. As such, the Exchange proposes that new Exchange Members will not be charged the proposed Trading Rights Fee for their first three months of Membership. Moreover, for any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee will be pro-rated in accordance with the date on which Membership is approved. For example, if a firm's Membership is approved on May 15, 2019, then, as proposed, it would not be charged for its first three

⁴ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

months of Membership. The month of August would then be pro-rated and the Trading Rights Fee would be assessed from August 15, 2019 through the end of the month. During any month in which a firm terminates Membership with the Exchange, the monthly Trading Rights Fee will not be pro-rated.

As proposed, the Exchange believes the Trading Rights Fee assessed aligns with the benefit provided by allowing Members to trade on an efficient and well-regulated market. The proposed Trading Rights Fee will fund a portion of the cost of regulating and maintaining the Exchange's equities market. Lastly, the Exchange believes the cost of Exchange Membership, including the proposed Trading Rights Fees, is significantly lower than the cost of membership in a number of other SROs.⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed Trading Right Fee is reasonable because the fee will assist in funding the overall regulation and maintenance of the Exchange. Additionally, the Exchange believes the fee is reasonable because the cost of this membership fee is generally less than the analogous membership fees of other markets. For example, the Exchange's proposed Trading Rights Fee at \$250 a month is substantially lower than the NASDAQ Stock Market's ("Nasdaq") analogous fee, which assesses a monthly Trading Rights Fee of \$1,250 per member.

In addition to this, the Exchange believes that not charging a Trading Rights Fee for Members that trade less

than a monthly ADV of 100,000 shares is reasonable because it ensures that smaller Members who do not trade significant volume on BYX Equities can continue to trade on the Exchange at a lower cost. The Exchange believes that not charging a fee for such Members is reasonable because smaller Members with lower volumes executed on the Exchange consume fewer regulatory resources. The Exchange also believes that not charging a Trading Rights Fee for Members that submit 90% or more of their orders per month as retail orders is reasonable because it ensures retail broker Members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange. Furthermore, continuing to allow smaller Members and retail broker Members to trade on the Exchange without incurring a Trading Rights Fee may encourage additional participation from such Members and thereby contribute to a more diverse and competitive market for equity securities traded on the Exchange.

Additionally, the Exchange believes that not charging its new Members the proposed Trading Rights Fee for their first three months of Membership is reasonable because it provides an incentive for firms and other participants that are not currently Members of the Exchange to apply for Membership and bring additional liquidity to the market to the benefit of all market participants. The Exchange believes that not charging a Trading Rights Fee for new Members will incentivize firms to become Members of the Exchange. The Exchange believes creating incentives for new Exchange Members protects investors and the public interest by increasing the competition and liquidity across the Exchange.

The Exchange believes that the proposed Trading Rights Fee is equitable and is not unfairly discriminatory because it will apply equally to all Members with an ADV of 100,000 shares or more traded per month and all Members in which less than 90% of their orders are submitted as retail orders per month.⁸ The Exchange believes that not charging the Trading Rights Fee for Members that do not meet these thresholds in a month is not unfairly discriminatory as it is designed to reduce the costs of smaller

Members and retail-based Members that transact on the Exchange. Furthermore, the Exchange believes that not charging a Trading Rights Fee for a new Member for the first three months of Membership is equitable and not unfairly discriminatory because the proposed waiver will be offered to all market participants that wish to become Members of the Exchange. As stated, the proposed waiver intends to incentivize new Membership which will bring increased liquidity and competition to the benefit of all market participants. In addition to this, the Exchange notes that the proposed fee is equitable and not unfairly discriminatory because it will contribute revenue to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed rule change will apply equally to all Members that reach an ADV of 100,000 shares traded or greater, and those that submit less than 90% of their orders as retail orders per month. Although smaller Members would be excluded from the Trading Rights Fee, the Exchange believes that this may increase competition by encouraging additional order flow from such smaller Members thereby contributing to a more diverse, vibrant, and competitive market. Additionally, while the proposed three month waiver of the Trading Rights Fee only applies to new Members, new Members can be an important source of liquidity and facilitate competition within the market, which uniformly benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange operates in a highly competitive environment in which market participants can readily favor competing exchanges and marketplaces if they deem fee levels at a particular exchange or other venue to be excessive. If the proposed fee increase is unattractive to members, it is likely that the Exchange will lose

⁵ See NASDAQ Stock Market Equity Rules, Equity 7, Sec. 10(a) (assessing a trading rights fee of \$1,250 per month per each member); New York Stock Exchange Price List 2019, "Trading Licenses" (assessing an annual fee \$50,000 for the first trading license held by a member, to which the Exchange notes that the Exchange assesses a \$2,500 annual fee for membership, and that this annual fee coupled with 12 months of the proposed Trading Rights Fees remains substantially lower than NYSE's annual trading license fee).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ A Member will not be charged if it meets either one (or both) of the exceptions. To illustrate, if a Member submits 5% of its orders as retail orders but only has an ADV of 90,000 shares traded, that Member will not be charged the proposed Trading Rights Fee.

membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, and in covering costs associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. The Exchange notes that competitors are free to modify their own fees in response to its proposal, and because Members are not compelled to be Members of the Exchange and may trade on numerous other exchanges and other alternative venues, the Exchange believes that the proposed fee change will not impose a burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2019-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-009 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10120 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33472; 812-14953]

Collaborative Investment Series Trust and Belpointe Asset Management, LLC

May 10, 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)(f) 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; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Collaborative Investment Series Trust ("Trust"), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, and Belpointe Asset Management, LLC ("Initial Adviser"), a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on September 14, 2018, and amended on February 25, 2019 and March 27, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

¹¹ 17 CFR 200.30-3(a)(12).

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 June 4, 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: JoAnn M. Strasser, Thompson Hine LLP, 41 S. High Street, Suite 1700, Columbus, Ohio 43215; Gregory Skidmore, Belpointe Asset Management, LLC, 125 Greenwich Ave., Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Trace W. Rakestraw, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's 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. 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 a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") (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. 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.

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 a person who is an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), 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

¹ Applicants request that the order apply to the Initial Fund, as well as to future series of the Trust, and any other open-end management investment companies or series thereof (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (the Initial Adviser and each such other entity and any successor thereto including in the term "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.

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. 2019–10103 Filed 5–15–19; 8:45 am]

BILLING CODE 8011–01–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 the Adviser to the Funds is also an investment adviser to a Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85825; File No. SR–CboeBZX–2019–039]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Applicable to the BZX Equities Trading Platform (“BZX Equities”) as It Relates to Pricing for the Use of the TRIM Routing Strategy

May 10, 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 May 1, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule applicable to the BZX equities trading platform (“BZX Equities”) as it relates to pricing for the use of the TRIM routing strategy. The text of the proposed rule change is attached as Exhibit 5. [sic]

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BZX Equities fee schedule to change the pricing applicable to orders routed using the TRIM routing strategy in connection with planned changes to the System routing table.³ TRIM is a routing strategy offered by the Exchange that is used to target certain low cost venues by routing to those venues after accessing available liquidity on the BZX Book. In February 2019, New York Stock Exchange (“NYSE”) was removed from the System routing table as a low cost protected market center, and NYSE American LLC (“NYSE American”) and NYSE National, Inc. (“NYSE National”) were added as a low cost protected market centers. Therefore, pursuant to Rule 11.13(b)(3), the Exchange has determined to modify the System routing table such that TRIM no longer routes to NYSE, and has decided to add NYSE American and NYSE National as a low cost venues under the TRIM routing strategy. These changes to the TRIM routing strategy are scheduled to be introduced on May 1, 2019.

Currently, orders routed to NYSE using the TRIM routing strategy are assessed a fee of \$0.00280 per share.⁴ Orders routed using the TRIM routing strategy to BYX are provided a rebate of \$0.00150 per share,⁵ to EDGA are provided a rebate of \$0.00240 per share,⁶ and to BX and provided a rebate of \$0.00100 per share.⁷ Also, orders currently routed to NYSE American using the SLIM strategy are assessed a fee of \$0.0002 and yield fee code MX, and orders routed to NYSE National using the SLIM routing strategy are provided a rebate of \$0.00200 and yield fee code NX. The Exchange proposes a number of changes to these fees in

³ The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. See Rule 11.13(b)(3). The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

⁴ See Cboe BZX U.S. Equities Exchange Fee Schedule, fee code D.

⁵ See Cboe BZX U.S. Equities Exchange Fee Schedule, fee code BY.

⁶ See Cboe BZX U.S. Equities Exchange Fee Schedule, fee code BJ.

⁷ See Cboe BZX U.S. Equities Exchange Fee Schedule, fee code TV.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

connection with the changes to the routing table for TRIM.

In recognition of the fact that NYSE American and NYSE National can be accessed at a low cost today, the Exchange proposes to provide a fee and rebates to orders routed to these exchanges using the TRIM routing strategy, respectively. Specifically, the Exchange proposes to add TRIM to the list of routing strategies that yield fee codes MX and NX, which relate to orders routed to NYSE American and NYSE National, respectively. As proposed, orders routed using the TRIM routing strategy would be assessed a fee of \$0.00020 per share if executed on NYSE American (yielding an MX fee code). If executed on NYSE National (yielding an NX fee code), those orders using the TRIM routing strategy would be provided a rebate of \$0.00200 per share in securities priced at or above \$1.00, and no charge or rebate would be applied for securities priced below \$1.00. The fee and rebates are consistent with the fee and rebates currently offered for orders routed to NYSE American and NYSE National using a similar low cost routing strategy, SLIM, which yield fee codes MX and NX, respectively.

In addition to this, the Exchange notes that orders routed to BYX using the TRIM or SLIM routing strategy⁸ are provided rebates that are applicable to eligible orders in all securities. BYX, however, does not provide rebates to orders that remove liquidity in securities priced below \$1.00, and instead charges a fee.⁹ As such, the Exchange proposes to amend the pricing for orders routed to BYX pursuant to fee code BY, such that no charge or rebate would be provided in securities priced below \$1.00 (*i.e.*, the Exchange proposes to append footnote 11 to fee code BY in the Fees Codes and Associated Fees table).

Moreover, since NYSE is no longer included as a low cost protected market center, the Exchange proposes to eliminate special pricing for orders routed to NYSE using the TRIM routing strategy under fee code D. Such orders would now pay the default routing fee

for orders routed using this routing strategy.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹¹ in general, and furthers the requirements of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed routing fee changes are appropriate as they reflect changes to the System routing table used to determine the order in which venues are accessed using the TRIM routing strategy. As stated, TRIM specifically targets certain equities exchanges that provide low cost executions or rebates to liquidity removing orders, and routes to those venues after trading with the BZX Book. The Exchange believes that the proposed changes reflect the intent of Members when they submit routable order flow to the Exchange using the TRIM routing strategy.

The Exchange believes that it is reasonable and equitable to assess the proposed fee on orders routed to NYSE American and proposed rebate on orders routed to NYSE National using the TRIM routing strategy. As mentioned previously, the Exchange recently added these two exchanges to its list of low cost protected market centers, and wishes to provide the benefit of the rebate or lower fee provided by those markets to BZX Members using the TRIM routing strategy. The Exchange currently offers such incentives when routing to those markets using another low cost routing strategy, SLIM. As is the case for orders routed via the SLIM routing strategy to NYSE American or NYSE National, the Exchange believes the proposed fees and rebates applicable to the TRIM routing strategy to these venues generally reflect the current transaction fees and rebates available for accessing liquidity on those markets.¹³ The

Exchange believes that these changes may increase interest in the Exchange's TRIM routing strategy, in particular, by passing on better pricing to BZX members that choose to enter such orders on the Exchange, thereby encouraging additional order flow to be entered to the BZX Book. In addition to this, the Exchange believes that is reasonable and equitable to eliminate special pricing for orders routed to NYSE using TRIM under fee code D, as NYSE is no longer included as a low cost protected market center.

The Exchange also believes that it is reasonable and equitable to provide free executions, rather than rebates, for orders routed to BYX using the TRIM or SLIM routing strategies¹⁴ in securities priced below \$1.00. Although BYX generally provides rebates to orders that remove liquidity, those rebates are limited to securities priced at or above \$1.00.¹⁵ For orders that remove liquidity in securities priced below \$1.00, BYX instead charges a fee.¹⁶ With the proposed change to the routing fees, the Exchange would recoup some, but not all, of the cost associated with routing orders in lower priced securities to BYX on behalf of Members that use the TRIM or SLIM routing strategies.¹⁷

Finally, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory as the proposed fees and rebates would apply equally to all Members that use the Exchange to route orders using the associated routing strategy. The proposed fees are designed to reflect the fees charged and rebates offered by certain away trading centers that are accessed by Exchange routing strategies, and are being made in conjunction with changes to the System routing table designed to provide Members with low cost executions for their routable order flow. Furthermore, if Members do not favor the proposed pricing, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

remove liquidity in securities below \$1.00 are executed without charge or rebate. See NYSE National, Schedule of Fees and Rebates, I. Transaction Fees, A. General Rates.

¹⁴ See *supra* note 8.

¹⁵ See *supra* note 9.

¹⁶ *Id.*

¹⁷ See *supra* note 8.

¹⁰ Pursuant to proposed fee codes MX and NX, as well as fee codes BY, BJ and TV. See *supra* notes 5–7.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ NYSE American currently charges a fee for removing liquidity that is \$0.00020 per share in securities priced at or above \$1.00, and 0.25% of the total dollar value of the transaction in securities priced below \$1.00. See NYSE American Equities Price List, I. Transaction Fees.

NYSE National currently provides a rebate of \$0.00200 per share in securities priced at or above \$1.00 for members that achieve their taking tier. See NYSE National Schedule of Fees and Rebates, I. Transaction Fees, B. Tiered Rates. Orders that

⁸ See *supra* note 5. The Exchange also notes that it is simultaneously proposing to discontinue the use of the TRIM2 routing strategy, effective May 1, 2019, which is currently provided as a routing strategy that yields fee code BY.

⁹ Orders that remove liquidity on BYX in securities prices below \$1.00 are charged a fee of equal to 0.10% of the total dollar value. See Cboe BYX U.S. Equities Exchange Fee Schedule, Standard Rates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed routing fee changes are designed to reflect changes being made to the System routing table used to determine where to send certain routable orders, and generally provide better pricing to Members for orders routed to low cost protected market centers using the Exchange's routing strategies. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-039 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10123 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85836; File No. SR-MIAX-2019-23]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 10, 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 April 30, 2019, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to modify certain of the Exchange's system connectivity fees.

The Exchange initially filed the proposal on March 1, 2019 (SR-MIAX-2019-10). That filing has been withdrawn and replaced with the current filing (SR-MIAX-2019-23).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections (5a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (“Gb”) fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (“ULL”) fiber connection, which are charged to both Members³ and non-Members of the Exchange for connectivity to the Exchange’s primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange’s disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange’s affiliate, MIAx PEARL, LLC (“MIAx PEARL”). These proposed fee increases are collectively referred to herein as the “Proposed Fee Increases.”

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.⁴ The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.⁵ The Commission received one comment letter on the proposal.⁶ The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the “Suspension Order”) issued by the Commission on September 17, 2018.⁷ The Suspension Order also instituted proceedings to determine whether to approve or

disapprove the First Proposed Rule Change.⁸

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange’s reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.⁹ The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.¹⁰ The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.¹¹ The Commission received one comment letter on the proposal.¹² The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the “Second Suspension Order”) issued by the Commission on October 3, 2018.¹³ The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.¹⁴

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange’s reliance on the fees of other exchanges to justify its own fee increases. In

addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.¹⁵

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.¹⁶ The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.¹⁷ The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange’s belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the “BOX Order”).¹⁸ In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (“BOX”) to increase BOX’s connectivity fees that prevented the Commission from finding that BOX’s proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.¹⁹

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018) (SR-MIAx-2018-19) (the “First Proposed Rule Change”).

⁵ *Id.*

⁶ See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (“Healthy Markets”), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (“Healthy Markets Letter”).

⁷ See Securities Exchange Act Release No. 84175 (September 17, 2018), 83 FR 47955 (September 21, 2018) (SR-MIAx-2018-19) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

⁸ *Id.*

⁹ See Securities Exchange Act Release No. 84398 (October 10, 2018), 83 FR 52264 (October 16, 2018) (SR-MIAx-2018-19) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

¹⁰ See Securities Exchange Act Release No. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018) (SR-MIAx-2018-25) (the “Second Proposed Rule Change”) (Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹¹ *Id.*

¹² See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (“SIFMA”), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (“SIFMA Letter”).

¹³ See *supra* note 10.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 84650 (November 26, 2018), 83 FR 61705 (November 30, 2018) (SR-MIAx-2018-25) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

¹⁶ See Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019) (SR-MIAx-2019-10) (the “Third Proposed Rule Change”) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

¹⁷ *Id.*

¹⁸ See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04).

¹⁹ See Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAx, to Vanessa

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that "MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases."²⁰ The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was "remarkably different," and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the

Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.²¹

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.²² The Exchange is now re-filing the Proposed Fee Increases to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) \$1,100 for the 1Gb connection; (b) \$5,500 for the 10Gb connection; and (c) \$8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of \$500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of \$2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect ("MENI") can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed

only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From \$1,100 to \$1,400 for the 1Gb connection; (b) from \$5,500 to \$6,100 for the 10Gb connection; and (c) from \$8,500 to \$9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From \$500 to \$550 for the 1Gb connection; and (b) from \$2,500 to \$2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act²⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Changes are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are competitive and market-driven. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant

Countryman, Acting Secretary, Commission, dated April 5, 2019 ("MIAX Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("Second SIFMA Letter"); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("IEX Letter"); and Letter from Tyler Gellach, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 ("Second Healthy Markets Letter").

²⁰ See IEX Letter, pg. 1.

²¹ See Second Healthy Markets Letter, pg. 2.

²² See SR-MIAX-2019-10.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ 15 U.S.C. 78f(b)(5).

connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. Further, of the number of Members that connect directly to MIAX, many such Members do not purchase market data from MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. For example, the following are not Members of MIAX: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options

markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in few hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX or its affiliates, MIAX PEARL and MIAX Emerald, they do not purchase connectivity to MIAX, and they do not purchase market data from MIAX. The Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX, the Exchange provides information about the Exchange's available connectivity alternatives.²⁶ The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/

²⁶ See the MIAX Connectivity Guide at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.

choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX and its affiliates. MIAX competes with nine (9) non-Members who resell MIAX connectivity. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX and/or MIAX PEARL. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX and/or MIAX PEARL. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX, constraining the price that MIAX is able to charge for connectivity to its Exchange.

The Exchange²⁷ and MIAX PEARL²⁸ are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX, MIAX PEARL, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX PEARL, or both, with the exception of one new Member who is currently in the on-boarding process. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange.

²⁷ The Exchange has 38 distinct Members, excluding affiliated entities. See MIAX Exchange Member Directory, available at <https://www.miaxoptions.com/exchange-members>.

²⁸ MIAX PEARL has 36 distinct Members, excluding affiliated entities. See MIAX PEARL Exchange Member Directory, available at <https://www.miaxoptions.com/exchange-members/pearl>.

Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Changes are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Approximately just less than half of MIAX and MIAX PEARL Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases (\$9,300 for a 10Gb ULL connection versus \$1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering

smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only 4.39% market share of the U.S. options industry in 2018 in Equity/ETF classes according to the OCC.²⁹ For all of 2018, the Exchange's affiliate, MIAX PEARL, had only 4.82% market share of the U.S. options industry in Equity/ETF classes according to the OCC.³⁰ The Exchange is not aware of any evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 45 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. ("Cboe") has over 200 members,³¹ Nasdaq ISE, LLC has approximately 100 members,³² and NYSE American LLC

has over 80 members.³³ If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 45 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018. In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX and MIAX PEARL and targeting mid-market resting orders; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.³⁴ Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After

²⁹ See Exchange Market Share of Equity Products—2018, The Options Clearing Corporation, available at <https://www.theocc.com/webapps/exchange-volume>.

³⁰ *Id.*

³¹ See Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002831.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002833.pdf>); Form 1/A, filed July 24, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002781.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm>).

³² See Form 1/A, filed July 1, 2016 (<https://www.sec.gov/Archives/edgar/vpr/1601/16019243.pdf>).

³³ See <https://www.nyse.com/markets/american-options/membership#directory>.

³⁴ The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation

is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that account that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 75% of the volume on the Exchange. For example, in April of 2019, to date, 11 million contracts of the 14 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. The Exchange considered whether to increase transaction fees and other fees in order to offset its costs as an alternative to increasing connectivity fees, however, the Exchange determined that increasing its connectivity fees was the only viable alternative. This is because the increased costs are more closely associated with connectivity, as well as the intense level of competition among the options exchanges for order flow through transaction fees.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since it last filed to increase its connectivity fees in December 2016, which became effective on January 1, 2017.³⁵ Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and

expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development ("R&D") efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to the expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it last increased its connectivity fees on January 1, 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX and its affiliates, including both primary/secondary sites and disaster recovery, was over \$30 million. The current annual operational expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) is approximately \$8.5 million. This does not include additional indirect expenses that the Exchange incurs that are allocated to the support of network infrastructure of the Exchange. These costs have increased over 10% since the last time the

³⁵ See Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR-MIAX-2016-47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees).

Exchange increased its connectivity fees on January 1, 2017. As these operational expenses increase, MIAX and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the operational expense increases include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately \$800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately \$500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately \$25,000); and a 30% increase in market data connectivity fees (increase of approximately \$200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with MIAX consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX to effectively pay its competitors for this connectivity.

The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct operational expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually

monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since January 1, 2017.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC ("Phlx"), NYSE Arca, Inc. ("Arca"), NYSE American LLC ("NYSE American") and Nasdaq ISE, LLC ("ISE") all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their

participants.³⁶ The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.³⁷ While MIAX's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.³⁸

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange has received no official complaints from Members or others who connect to it that its fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants. Further, the Exchange is unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily

³⁶ See Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

³⁷ *Id.*

³⁸ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging \$3,000 for disaster recovery testing & relocation services); see also Cboe Exchange, Inc. ("Cboe") Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of \$2,000 for a 1Gb disaster recovery network access port and a monthly fee of \$6,000 for a 10Gb disaster recovery network access port).

connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁹ and Rule 19b-4(f)(2)⁴⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2019-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAX-2019-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-23 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10115 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85842; File No. SR-CboeEDGA-2019-011]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related To Amending its Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2019, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA Equities") proposes to amend its fee schedule assessed on Members to establish a monthly Trading Rights Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly Trading Rights Fee under the "Membership Fees" section of the fee schedule. The Trading Rights Fee will be assessed on Members that trade more than a specified volume in U.S. equities, and will assist in covering the cost of regulating the Exchange and its Members. Specifically, the Exchange proposes to charge Member firms a monthly Trading Rights Fee of \$250 per month for the ability to trade on the Exchange. So as to continue to encourage active participation on the Exchange by smaller Members, the Trading Rights Fee would not be

³ The Commission notes that the Exchange initially filed the proposed rule change on April 29, 2019 (SR-CboeEDGA-2019-009). On May 2, 2019, the Exchange withdrew that filing and submitted this filing.

³⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁰ 17 CFR 240.19b-4(f)(2).

⁴¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

charged to Members with a monthly ADV⁴ of less than 100,000 shares.

Additionally, the Exchange recognizes that new Members are new and important sources of liquidity. As such, the Exchange proposes that new Exchange Members will not be charged the proposed Trading Rights Fee for their first three months of Membership. Moreover, for any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee will be pro-rated in accordance with the date on which Membership is approved. For example, if a firm's Membership is approved on May 15, 2019, then, as proposed, it would not be charged for its first three months of Membership. The month of August would then be pro-rated and the Trading Rights Fee would be assessed from August 15, 2019 through the end of the month. During any month in which a firm terminates Membership with the Exchange, the monthly Trading Rights Fee will not be pro-rated.

As proposed, the Exchange believes the Trading Rights Fee assessed aligns with the benefit provided by allowing Members to trade on an efficient and well-regulated market. The proposed Trading Rights Fee will fund a portion of the cost of regulating and maintaining the Exchange's equities market. Lastly, the Exchange believes the cost of Exchange Membership, including the proposed Trading Rights Fees, is significantly lower than the cost of membership in a number of other SROs.⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and

other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed Trading Right Fee is reasonable because the fee will assist in funding the overall regulation and maintenance of the Exchange. Additionally, the Exchange believes the fee is reasonable because the cost of this membership fee is generally less than the analogous membership fees of other markets. For example, the Exchange's proposed Trading Rights Fee at \$250 a month is substantially lower than the NASDAQ Stock Market's ("Nasdaq") analogous fee, which assesses a monthly Trading Rights Fee of \$1,250 per member.

In addition to this, the Exchange believes that not charging a Trading Rights Fee for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it ensures that smaller Members who do not trade significant volume on EDGA Equities can continue to trade on the Exchange at a lower cost. The Exchange believes that not charging a fee for such Members is reasonable because smaller Members with lower volumes executed on the Exchange consume fewer regulatory resources. Furthermore, continuing to allow smaller Members and retail broker Members to trade on the Exchange without incurring a Trading Rights Fee may encourage additional participation from such Members and thereby contribute to a more diverse and competitive market for equity securities traded on the Exchange.

Additionally, the Exchange believes that not charging its new Members the proposed Trading Rights Fee for their first three months of Membership is reasonable because it provides an incentive for firms and other participants that are not currently Members of the Exchange to apply for Membership and bring additional liquidity to the market to the benefit of all market participants. The Exchange believes that not charging a Trading Rights Fee for new Members will incentivize firms to become Members of the Exchange. The Exchange believes creating incentives for new Exchange Members protects investors and the public interest by increasing the competition and liquidity across the Exchange.

The Exchange believes that the proposed Trading Rights Fee is equitable and is not unfairly discriminatory because it will apply equally to all Members with an ADV of 100,000 shares or more traded per month. The Exchange believes that not charging the Trading Rights Fee for Members that do not meet this threshold

in a month is not unfairly discriminatory as it is designed to reduce the costs of smaller Members and retail-based Members that transact on the Exchange. Furthermore, the Exchange believes that not charging a Trading Rights Fee for a new Member for the first three months of Membership is equitable and not unfairly discriminatory because the proposed waiver will be offered to all market participants that wish to become Members of the Exchange. As stated, the proposed waiver intends to incentivize new Membership which will bring increased liquidity and competition to the benefit of all market participants. In addition to this, the Exchange notes that the proposed fee is equitable and not unfairly discriminatory because it will contribute revenue to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed rule change will apply equally to all Members that reach an ADV of 100,000 shares traded or greater. Although smaller Members would be excluded from the Trading Rights Fee, the Exchange believes that this may increase competition by encouraging additional order flow from such smaller Members thereby contributing to a more diverse, vibrant, and competitive market. Additionally, while the proposed three month waiver of the Trading Rights Fee only applies to new Members, new Members can be an important source of liquidity and facilitate competition within the market, which uniformly benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange operates in a highly competitive environment in which market participants can readily favor competing exchanges and marketplaces if they deem fee levels at a particular exchange or other venue to be excessive. If the proposed fee increase is unattractive to members, it is

⁴ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

⁵ See NASDAQ Stock Market Equity Rules, Equity 7, Sec. 10(a) (assessing a trading rights fee of \$1,250 per month per each member); New York Stock Exchange Price List 2019, "Trading Licenses" (assessing an annual fee \$50,000 for the first trading license held by a member, to which the Exchange notes that the Exchange assesses a \$2,500 annual fee for membership, and that this annual fee coupled with 12 months of the proposed Trading Rights Fees remains substantially lower than NYSE's annual trading license fee).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

likely that the Exchange will lose membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, and in covering costs associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. The Exchange notes that competitors are free to modify their own fees in response to its proposal, and because Members are not compelled to be Members of the Exchange and may trade on numerous other exchanges and other alternative venues, the Exchange believes that the proposed fee change will not impose a burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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-CboeEDGA-2019-011 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-CboeEDGA-2019-011. 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-CboeEDGA-2019-011 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-10121 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85837; File No. SR-PEARL-2019-17]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAx PEARL Fee Schedule

May 10, 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 April 30, 2019, MIAx PEARL, LLC ("MIAx PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAx PEARL Fee Schedule (the "Fee Schedule") to modify certain of the Exchange's system connectivity fees.

The Exchange initially filed the proposal on March 1, 2019 (SR-PEARL-2019-08). That filing has been withdrawn and replaced with the current filing (SR-PEARL-2019-17).

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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit ("Gb") fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency ("ULL") fiber connection, which are charged to both Members³ and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX"). These proposed fee increases are collectively referred to herein as the "Proposed Fee Increases."

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.⁴ The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.⁵ The Commission received one comment letter on the proposal.⁶ The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the "Suspension Order") issued by the Commission on September 17, 2018.⁷ The Suspension Order also instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁸

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to

support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.⁹ The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.¹⁰ The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.¹¹ The Commission received one comment letter on the proposal.¹² The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the "Second Suspension Order") issued by the Commission on October 3, 2018.¹³ The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.¹⁴

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.¹⁵

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases

immediately effective.¹⁶ The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.¹⁷ The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the "BOX Order").¹⁸ In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC ("BOX") to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.¹⁹

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the

¹⁶ See Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019) (SR-MIAX-2019-10) (the "Third Proposed Rule Change") (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

¹⁷ *Id.*

¹⁸ See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04).

¹⁹ See Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 ("MIAX Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("Second SIFMA Letter"); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 ("IEX Letter"); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 ("Second Healthy Markets Letter").

³ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018) (SR-PEARL-2018-16). (The "First Proposed Rule Change").

⁵ *Id.*

⁶ See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 ("Healthy Markets Letter").

⁷ See Securities Exchange Act Release No. 34-84177 (September 17, 2018).

⁸ *Id.*

⁹ See Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR-PEARL-2018-16).

¹⁰ See Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018) (SR-PEARL-2018-19). (The "Second Proposed Rule Change").

¹¹ *Id.*

¹² See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association ("SIFMA"), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 ("SIFMA Letter").

¹³ See *supra* note 10.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 84651 (November 26, 2018), 83 FR 61687 (November 30, 2018) (SR-PEARL-2018-19).

proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that "MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases."²⁰ The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was "remarkably different," and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.²¹ On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.²²

The Exchange is now re-filing the Proposed Fee Increases to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the

Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) \$1,100 for the 1Gb connection; (b) \$5,500 for the 10Gb connection; and (c) \$8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of \$500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of \$2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect ("MENI") can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From \$1,100 to \$1,400 for the 1Gb connection; (b) from \$5,500 to \$6,100 for the 10Gb connection; and (c) from \$8,500 to \$9,300 for the 10Gb ULL connection. The network connectivity fees for

connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From \$500 to \$550 for the 1Gb connection; and (b) from \$2,500 to \$2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act²⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Changes are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are competitive and market-driven. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX

²⁰ See IEX Letter, pg. 1.

²¹ See Second Healthy Markets Letter, pg. 2.

²² See SR-PEARL-2019-08).

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ 15 U.S.C. 78f(b)(5).

PEARL. Further, of the number of Members that connect directly to MIAX PEARL, many such Members do not purchase market data from MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. For example, the following are not Members of MIAX PEARL: The D.E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX PEARL, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity that market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in few hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days

when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX PEARL or its affiliates, MIAX and MIAX Emerald, they do not purchase connectivity to MIAX PEARL, and they do not purchase market data from MIAX PEARL. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX PEARL, the Exchange provides information about the Exchange's available connectivity alternatives.²⁶ The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX PEARL notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX PEARL and its affiliates. MIAX PEARL competes with nine (9) non-Members who resell MIAX PEARL connectivity. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX PEARL (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX PEARL does not receive any connectivity revenue from that sale. It is

²⁶ See the MIAX Connectivity Guide at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.

entirely between the third-party and the purchaser, thus constraining the ability of MIAX PEARL to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX PEARL and/or MIAX. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX PEARL and/or MIAX. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX PEARL, constraining the price that MIAX PEARL is able to charge for connectivity to its Exchange.

The Exchange²⁷ and MIAX²⁸ are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX PEARL, MIAX, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX, or both, with the exception of one new Member who is currently in the on-boarding process. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Changes are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX

²⁷ MIAX PEARL has 36 distinct Members, excluding affiliated entities. See MIAX PEARL Exchange Member Directory, available at <https://www.miaxoptions.com/exchange-members/pearl>.

²⁸ MIAX has 38 distinct Members, excluding affiliated entities. See MIAXExchange [sic] Member Directory, available at <https://www.miaxoptions.com/exchange-members>.

PEARL recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Approximately just less than half of MIAX PEARL and MIAX Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases (\$9,300 for a 10Gb ULL connection versus \$1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only 4.82% market share of the U.S. options industry in Equity/ETF classes according to the OCC in 2018.²⁹ For all of 2018, the Exchange's affiliate, MIAX had only 4.39% market share of the U.S. options industry in Equity/ETF classes according to the

OCC.³⁰ The Exchange is aware of no evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX PEARL must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 41 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. ("Cboe") has over 200 members,³¹ Nasdaq ISE, LLC has approximately 100 members,³² and NYSE American LLC has over 80 members.³³ If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 41 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases

took effect in August 2018. In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX PEARL and MIAX; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.³⁴ Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX PEARL did not experience any noticeable change (increase or decrease)

³⁰ *Id.*

³¹ See Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002831.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002833.pdf>); Form 1/A, filed July 24, 2018 (<https://www.sec.gov/Archives/edgar/vpr/1800/18002781.pdf>); Form 1/A, filed August 30, 2018 (<https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm>).

³² See Form 1/A, filed July 1, 2016 (<https://www.sec.gov/Archives/edgar/vpr/1601/16019243.pdf>).

³³ See <https://www.nyse.com/markets/american-options/membership#directory>.

³⁴ The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

²⁹ See Exchange Market Share of Equity Products—2018, The Options Clearing Corporation, available at <https://www.theocc.com/webapps/exchange-volume>.

in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that account that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 80% of the volume on the Exchange. For example, in April of 2019, to date,

approximately 12 million contracts of the approximately 14.5 million contracts executed were done by the top market making firms of the Exchange's total volume. The Exchange considered whether to increase transaction fees and other fees in order to offset its costs as an alternative to increasing connectivity fees, however, the Exchange determined that increasing its connectivity fees was the only viable alternative. This is because the increased costs are more closely associated with connectivity, as well as the intense level of competition among the options exchanges for order flow through transaction fees.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since Exchange launched operations in February 2017. Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development ("R&D") efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to the expanding its Information Security services, network monitoring and customer reporting, as well as

Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since became operational in February 2017. Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX PEARL and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX PEARL and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX PEARL and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX PEARL and its affiliates, including both primary/secondary sites and disaster recovery, was over \$30 million. The current annual operational expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) is approximately \$8.5 million. This does not include additional indirect expenses that the Exchange incurs that are allocated to the support of network infrastructure of the Exchange. These costs have increased over 10% since the Exchange became operational in February 2017. As these operational expenses increase, MIAX PEARL and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the operational expense increases include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately \$800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately \$500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately \$25,000); and a 30% increase in market data connectivity fees (increase of approximately \$200,000). Of note,

regarding market data connectivity fee increased cost, this is the cost associated with MIAX PEARL consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX PEARL to effectively pay its competitors for this connectivity. The Exchange also incurred significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct operational expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since February 2017.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network

determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC ("Phlx"), NYSE Arca, Inc. ("Arca"), NYSE American LLC ("NYSE American") and Nasdaq ISE, LLC ("ISE") all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.³⁵ The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.³⁶ While MIAX PEARL's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX PEARL believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX

³⁵ See Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

³⁶ *Id.*

PEARL believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.³⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange has received no official complaints from Members or others who connect to it that its fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants. Further, the Exchange is unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁸ and Rule

³⁷ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging \$3,000 for disaster recovery testing & relocation services); see also Cboe Exchange, Inc. ("Cboe") Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of \$2,000 for a 1Gb disaster recovery network access port and a monthly fee of \$6,000 for a 10Gb disaster recovery network access port).

³⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

19b-4(f)(2)³⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2019-17 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-2019-17. 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-2019-17 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-10116 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85829; File No. SR-NYSEArca-2019-14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to Certain Changes Regarding Investments of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E

May 10, 2019.

On March 13, 2019, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make certain changes regarding investments of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600-E. The proposed rule change was published for comment in the **Federal Register** on April 2, 2019.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 17, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates July 1, 2019 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2019-14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-10114 Filed 5-15-19; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before June 17, 2019.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer*, Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205-7030 curtis.rich@sba.gov.

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

³⁹ 17 CFR 240.19b-4(f)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85430 (Mar. 27, 2019), 84 FR 12646.

⁴ 15 U.S.C. 78s(b)(2).

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Form 857 is used by SBA examiners to obtain information about financing provided by small business investment companies (SBICs). This information, which is collected directly from the financed small business, provides independent confirmation of information reported to SBA by SBICs, as well as additional information not reported by SBICs.

Solicitation of Public Comments

Title: Small Business Investment Companies.

Description of Respondents: Small Business Investment Companies.

Form Number: SBA Form 857.

Estimated Annual Responses: 2,250.

Estimated Annual Hour Burden: 2,812.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–10142 Filed 5–15–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10761]

Determination on Imposition and Waiver of Sanctions Under Sections 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003

Consistent with the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228) (the “Act”), the Presidential Memorandum dated April 30, 2009, and Department of State Delegation of Authority 245–2, and with reference to the determinations set out in the Report to Congress transmitted pursuant to section 603 of the Act, regarding the extent of noncompliance by the Palestine Liberation Organization (PLO) or the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(1), “Denial of Visas to PLO and Palestinian Authority Officials.” This sanction is imposed for a period of 180 days from the date that the report under section 603 of the Act is transmitted to Congress or until such time as the next report under section 603 is required to be transmitted to Congress, whichever is later.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive this sanction, pursuant to section 604(c) of the Act.

This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report under section 603 of the Act is required to be transmitted to Congress, whichever is later.

This Determination shall be reported to Congress promptly and published in the **Federal Register**.

Dated: April 12, 2019.

John J. Sullivan,

Deputy Secretary of State.

[FR Doc. 2019–10174 Filed 5–15–19; 8:45 am]

BILLING CODE 4710–31–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36266]

San Francisco Bay Railway, LLC—Acquisition & Operation Exemption—San Francisco Bay Railroad, Inc.

San Francisco Bay Railway, LLC (SFB Railway), a non-carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by assignment from San Francisco Bay Railroad, Inc. (SFBR), SFBR’s lease of and license to operate trackage of the San Francisco Port Commission (the Port), extending from a connection with Union Pacific Railroad Company near the intersection of Amador Street and Cargo Way, through the Intermodal Container Transfer Facility and to Piers 92, 94, and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, Cal. (the Line).¹ According to SFB Railway, there are no mileposts assigned to the Line.

SFBR is a Class III rail carrier that has leased and operated rail trackage in the vicinity of the Intermodal Container Transfer Facility at the Port of San Francisco. *LB Railco, Inc.—Lease & Operation Exemption—S.F. Port Comm’n*, FD 33985 (STB served Jan. 8, 2001);² *S.F. Bay R.R.—Lease & Operation Exemption—S.F. Port Comm’n*, FD 36265 (STB served Feb. 15, 2019).

SFB Railway states that, pursuant to an Asset Purchase Agreement executed by SFB Railway and SFBR, SFB Railway will acquire, via assignment of certain agreements between SFBR and the Port (the Lease/Rail Agreements), SFBR’s lease and license to operate the Line.

¹ On May 3, 2019, SFB Railway supplemented its verified notice of exemption by submitting a certification that notice of the transaction was provided to shippers on the Line pursuant to the change in operators provisions at 49 CFR 1150.31(a)(3) and 1150.32(b).

² According to the verified notice, LB Railco, Inc., changed its name to San Francisco Bay Railroad, Inc., on February 20, 2008.

The Lease/Rail Agreements provide for the lease and operation of the Line until December 31, 2033, with a mutual five-year extension option to December 31, 2038. The verified notice states that, as contemplated by the Lease/Rail Agreements, the parties have sought the Port’s consent to the assignment of those agreements.

According to SFB Railway, the proposed transaction does not involve a limitation on SFB Railway’s interchange with a third-party connecting carrier.

SFB Railway certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I carrier and will not exceed \$5 million.

Under 49 CFR 1150.32(b), a change in operators requires that notice be given to shippers. As noted above, on May 3, 2019, SFB Railway filed a certification that it has provided notice of the proposed transaction to shippers on the Line.

The earliest this transaction may be consummated is May 30, 2019 (30 days after the verified notice was filed).³ If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 23, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36266, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SFB Railway’s representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to SFB Railway, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at www.stb.gov.

Decided: May 13, 2019.

³ SFB Railway states that it intends to consummate the proposed transaction on or shortly after May 31, 2019, but in no event prior to the Port’s pending issuance of consent to the assignment of the Lease/Rail Agreements to SFB Railway.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2019-10144 Filed 5-15-19; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36267]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company and Grand Elk Railroad LLC

Grand Trunk Western Railroad Company (GTW) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire trackage rights on a line of railroad in Kalamazoo, Mich., owned by Norfolk Southern Railway Company (NSR), and leased to Grand Elk Railroad LLC (GDLK).¹ GTW states that NSR and GDLK have agreed, pursuant to a written amendment to a trackage rights agreement, to grant GTW additional overhead trackage rights from milepost 2.17 at Miller Road southward to milepost 3.67 at Kilgore Road, a distance of approximately 1.50 miles.²

The verified notice states that the proposed transaction will afford GTW the ability to use the siding positioned between Miller Road and Kilgore Road to run around its railroad equipment to permit greater operating efficiency in its provision of common carrier service.

The transaction may be consummated on or after May 30, 2019, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must

be filed by May 23, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36267, must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on GTW's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to GTW, this action is categorically excluded from environmental review under 49 CFR 1105.6(c), and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at www.stb.gov.

Decided: May 13, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2019-10155 Filed 5-15-19; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of five persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing an update to the identifying information of an entity currently on the Specially Designated Nationals and Blocked Persons List.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Department of the Treasury's Office of the General Counsel: Office of

the Chief Counsel (Foreign Assets Control), tel.: 202-622-2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On April 24, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following five persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. TABAJA, Hassan (a.k.a. TABAJA, Hasan; a.k.a. TABAJA, Hassan Husayn; a.k.a. TABAJA, Hassan Hussain), Lebanon; DOB 08 Oct 1971; POB Chiah, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport RL 0913767 (Lebanon); Identification Number 371923 (Lebanon); Residency Number 62270869 (United Arab Emirates) (individual) [SDGT] (Linked To: TABAJA, Adham Husayn).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of TABAJA, Adham Husayn, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

2. BAZZI, Wael (a.k.a. BAZZI, Wa'el; a.k.a. BAZZI, Wa'il Muhammad), Eglantierlaan 15, Antwerpen 2020, Belgium; DOB 01 Oct 1989 to 31 Oct 1989; alt. DOB 31 Oct 1989; POB Freetown, Sierra Leone; nationality Belgium; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport EN312261 (Belgium); National ID No. 89103150321 (individual) [SDGT] (Linked To: BAZZI, Mohammad Ibrahim).

Designated pursuant to section 1(c) of E.O. 13224 for acting for or on behalf BAZZI, Mohammad Ibrahim, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

Entities

1. BSQRD LIMITED, Mansion House Manchester Road, Altrincham Cheshire WA14 4RW, United Kingdom; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; D-U-N-S Number 22-369-0096; Company Number 11207847 (United Kingdom) [SDGT] (Linked To: BAZZI, Wael).

Designated pursuant to section 1(c) of E.O. 13224 for being owned or controlled by BAZZI, Wael, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

¹ GTW filed a supplement to its notice on May 9, 2019, to clarify the mileposts for the trackage rights to be acquired, and to submit a revised map.

² A redacted version of the agreement between GTW and NSR was filed with GTW's verified notice of exemption. GTW simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information in the unredacted version of the agreement, which GTW submitted under seal. That motion will be addressed in a separate decision.

2. OFFISCOOP NV, Frankrijklei 156, 5eVerd, Antwerpen 2000, Belgium; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; D–U–N–S Number 37–163–1008; Branch Unit Number 2093373727 (Belgium); Enterprise Number 0473365047 (Belgium) [SDGT] (Linked To: BAZZI, Wael).

Designated pursuant to section 1(c) of E.O. 13224 for being owned or controlled by BAZZI, Wael, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

3. VOLTRA TRANSCOR ENERGY BVBA (a.k.a. VOLTRA TRANSCOR ENERGY; f.k.a. “SOFTLINE”), Frankrijklei 156 (5deV), Antwerpen 2000, Belgium; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; D–U–N–S Number 37–339–4675; V.A.T. Number BE0443680473 (Belgium); Branch Unit Number 2052342727 (Belgium); Enterprise Number 0443680473 (Belgium) [SDGT] (Linked To: BAZZI, Wael).

Designated pursuant to section 1(c) of E.O. 13224 for being owned or controlled by BAZZI, Wael, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

Additionally, on April 24, 2019, OFAC updated the listing on the Specially Designated Nationals and Blocked Persons List for the following entity, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authorities listed below.

Entity

1. GLOBAL TRADING GROUP NV (a.k.a. GLOBAL TRADING GROUP), Frankrijklei 39, 2nd Floor, Antwerpen 2000, Belgium; 22 Liverpool Street, Freetown, Sierra Leone; Standard Chartered Bank Building, 2nd floor, Kairaba Ave, Banjul, The Gambia; Rue de Canal, G83 Zone 4G, 01BP1280, Abidjan, Cote d Ivoire; Quartier les Cocotiers, Avenue Pape Jean Paul II, Lot 4274, Cotonou, Benin; website www.globaltradinggroup.com; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; D–U–N–S Number 37–117–1419 [SDGT] (Linked To: BAZZI, Mohammad Ibrahim).

Designated pursuant to section 1(c) of E.O. 13224 for being owned or controlled by BAZZI, Mohammad Ibrahim, an individual determined to be subject to E.O. 13224.

The listing for this previously designated entity now appears as follows:

1. ENERGY ENGINEERS PROCUREMENT AND CONSTRUCTION (a.k.a. GLOBAL TRADING GROUP; a.k.a. GLOBAL TRADING GROUP NV; a.k.a. “EEPC”), Frankrijklei 39, 2nd Floor, Antwerpen 2000, Belgium; 22 Liverpool Street, Freetown, Sierra Leone; Standard Chartered Bank Building, 2nd floor, Kairaba Ave, Banjul, The Gambia; Rue de Canal, G83 Zone 4G, 01BP1280, Abidjan, Cote d Ivoire; Quartier les Cocotiers, Avenue Pape Jean Paul II, Lot 4274, Cotonou, Benin; Frankrijklei 156 (5th floor), Antwerpen 2000, Belgium; website

www.globaltradinggroup.com; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; D–U–N–S Number 37–117–1419 [SDGT] (Linked To: BAZZI, Mohammad Ibrahim).

Designated pursuant to section 1(c) of E.O. 13224 for being owned or controlled by BAZZI, Mohammad Ibrahim, an individual whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: April 24, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–10134 Filed 5–15–19; 8:45 am]

BILLING CODE 4810–AL–P



FEDERAL REGISTER

Vol. 84

Thursday,

No. 95

May 16, 2019

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 39, and 140

Derivatives Clearing Organization General Provisions and Core Principles;
Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 39, and 140

RIN 3038-AE66

Derivatives Clearing Organization General Provisions and Core Principles

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing amendments to certain regulations applicable to registered derivatives clearing organizations (DCOs). These proposed amendments would, among other things, address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance. In addition, the Commission is proposing technical amendments to certain provisions, including certain delegation provisions, in other parts of its regulations.

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may submit comments, identified by “Derivatives Clearing Organization General Provisions and Core Principles” and RIN 3038-AE66, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

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

information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

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

FOR FURTHER INFORMATION CONTACT:

Eileen A. Donovan, Deputy Director, 202-418-5096, edonovan@cftc.gov; Parisa Abadi, Associate Director, 202-418-6620, pabadi@cftc.gov; Eileen R. Chotiner, Senior Compliance Analyst, 202-418-5467, echotiner@cftc.gov; Abigail S. Knauff, Special Counsel, 202-418-5123, aknauff@cftc.gov; Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - A. Project KISS
 - B. Regulatory Framework for DCOs
- II. Amendments to Part 1—General Regulations Under the Commodity Exchange Act
 - A. Written Acknowledgment From Depositories—§ 1.20
 - B. Governance and Conflicts of Interest—§§ 1.59, 1.63, and 1.69
- III. Amendments to Part 39—Subpart A—General Provisions Applicable to DCOs
 - A. Definitions—§ 39.2
 - B. Procedures for Registration—§ 39.3
 - C. Procedures for Implementing DCO Rules and Clearing New Products
- IV. Amendments to Part 39—Subpart B—Compliance With Core Principles
 - A. Compliance With Core Principles—§ 39.10
 - B. Financial Resources—§ 39.11
 - C. Participant and Product Eligibility—§ 39.12
 - D. Risk Management—§ 39.13
 - E. Treatment of Funds—§ 39.15
 - F. Default Rules and Procedures—§ 39.16
 - G. Rule Enforcement—§ 39.17
 - H. Reporting—§ 39.19
 - I. Public Information—§ 39.21
 - J. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

¹ 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I (2018), and are accessible on the Commission’s website at <https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm>.

- K. Legal Risk—§ 39.27
- L. Fully-Collateralized Positions
- V. Amendments to Part 39—Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions
 - A. Financial Resources for SIDCOs and Subpart C DCOs—§ 39.33
 - B. Risk Management for SIDCOs and Subpart C DCOs—§ 39.36
 - C. Additional Disclosure for SIDCOs and Subpart C DCOs—§ 39.37
 - D. Corrections to Subpart C Regulations
- VI. Amendments to Appendix A to Part 39—Form DCO
- VII. Amendments to Appendix B to Part 39—Subpart C Election Form
- VIII. Amendments to Part 140—Organization, Functions, and Procedures of the Commission
- IX. Related Matters
 - A. Regulatory Flexibility Act
 - B. Paperwork Reduction Act
 - C. Cost-Benefit Considerations
 - D. Antitrust Considerations

I. Background

A. Project KISS

The Commission is engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly, and to make progress on G-20 regulatory reforms. This initiative is called Project KISS, which stands for “Keep It Simple, Stupid.”² Consistent with these objectives, the Commission is proposing amendments to regulations applicable to DCOs to, among other things, enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing relief and guidance.

B. Regulatory Framework for DCOs

Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles).³ In 2011, the Commission adopted regulations in

² See Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>. On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda (E.O. 13777). E.O. 13777 directs federal agencies, among other things, to designate a Regulatory Reform Officer and establish a Regulatory Reform Task Force. Although the CFTC, as an independent federal agency, is not bound by E.O. 13777, the Commission is nevertheless engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly. See Request for Information, 82 FR 23756 (May 24, 2017).

³ 7 U.S.C. 7a-1.

subparts A and B of part 39 to implement the DCO Core Principles.⁴ In 2013, the Commission adopted regulations in subpart C of part 39⁵ to establish additional standards for compliance with the DCO Core Principles for those DCOs that have been designated as systemically important (SIDCOs) by the Financial Stability Oversight Council in accordance with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁶ The subpart C regulations are consistent with the Principles for Financial Market Infrastructures (PFMIs), published by the Committee on Payments and Market Infrastructures (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO).⁷ Other DCOs may elect to opt-in to the subpart C requirements (subpart C DCOs) in order to achieve status as a qualifying central counterparty (QCCP).⁸

Since the part 39 regulations were adopted, Commission staff has worked

with DCOs to address questions regarding interpretation and implementation of the requirements established in the regulations. In light of this, the Commission believes it would be helpful to revise or clarify certain provisions of part 39 and to codify staff relief or guidance granted in the interim. The Commission is also proposing a few new requirements with respect to default procedures and event-specific reporting in response to recent events. The Commission believes these changes will provide greater clarity and transparency for DCOs and DCO applicants and lead to more effective DCO compliance and risk management generally.

The Commission has carefully considered the costs and benefits associated with the proposed amendments, and invites commenters to provide data and analysis regarding any aspect of the proposed rulemaking. In addition to the amendments proposed herein, the Commission requests comment for any other aspects of part 39 that commenters believe the Commission should clarify or otherwise amend.

II. Amendments to Part 1—General Regulations Under the Commodity Exchange Act

A. Written Acknowledgment From Depositories—§ 1.20

Regulation 1.20(d)(1) requires that a futures commission merchant (FCM) obtain a written acknowledgment from each depository with which the FCM deposits futures customer funds.⁹ The written acknowledgment must conform to a template letter set forth in appendix A to § 1.20, and the template letter includes certain requirements set forth in § 1.20(d)(3) through (6). Regulation 1.20(d)(1) further provides, however, that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules that provide for the segregation of customer funds in accordance with all relevant provisions of the CEA and the Commission's rules and orders thereunder. The Commission is proposing to amend § 1.20(d) to clarify that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The proposed changes are not intended to be substantive, but rather to reflect the Commission's intent when § 1.20 was last amended.

⁹ Regulation 22.5 applies the written acknowledgment letter requirements of § 1.20(d) to FCMs and DCOs in connection with the holding of cleared swaps customer collateral.

Nonetheless, the Commission emphasizes that it has ample means of obtaining information regarding accounts held at a DCO under § 1.20 by virtue of its ongoing oversight and supervision of DCOs. The Commission also is proposing to amend § 1.20(d)(7) and (8) to explicitly account for FCMs that deposit customer funds with a DCO and thus are not required to obtain a written acknowledgment letter.

B. Governance and Conflicts of Interest—§§ 1.59, 1.63, and 1.69

In the course of adopting the current part 39 regulations, the Commission removed and replaced § 39.2,¹⁰ which had exempted DCOs from all Commission regulations except for those specified therein (the “§ 39.2 exemption”). The Commission noted that the § 39.2 exemption failed to account for regulations applicable to DCOs that were adopted later, such as § 1.49.¹¹ The Commission further noted that removal of the § 39.2 exemption would subject DCOs only to § 1.49 and three additional regulations: §§ 1.59 (activities of self-regulatory organization employees, governing board members, committee members, and consultants); 1.63 (service on self-regulatory organization governing boards or committees by persons with disciplinary histories); and 1.69 (voting by interested members of self-regulatory organization governing boards and various committees).¹² The Commission explained that these three provisions would be superseded by regulations the Commission had proposed to implement Core Principles O (Governance Arrangements), P (Conflicts of Interest), and Q (Composition of Governing Boards).¹³

However, the Commission did not adopt those regulations, and §§ 1.59, 1.63, and 1.69 became applicable to DCOs. The Commission is now proposing to adopt implementing regulations for Core Principles O, P, and Q by moving certain requirements from subpart C, which is applicable to only SIDCOs and subpart C DCOs, to subpart B, which is applicable to all registered

¹⁰ The current § 39.2 sets forth definitions of terms used in part 39.

¹¹ See Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3714 (Jan. 20, 2011) (proposed rule).

¹² *Id.* at 3714 & n.77.

¹³ See Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (Oct. 18, 2010) (proposed rule); Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (Jan. 6, 2011) (proposed rule).

⁴ See Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (codified at 17 CFR part 39); Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 (Apr. 9, 2012) (further amending § 39.12).

⁵ Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

⁶ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

⁷ See CPMI–IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf>.

⁸ In July 2012, the Basel Committee on Banking Supervision, the international body that sets standards for the regulation of banks, published the “Capital Requirements for Bank Exposures to Central Counterparties” (Basel CCP Capital Requirements), which describes standards for capital charges arising from bank exposures to central counterparties (CCPs) related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions. The Basel CCP Capital Requirements create financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives with CCPs that are prudentially supervised in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the PFMIs. Specifically, the Basel CCP Capital Requirements introduce new capital charges based on counterparty risk for banks conducting financial derivatives transactions through a CCP. These incentives include (1) lower capital charges for exposures arising from derivatives cleared through a QCCP, and (2) significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs. A QCCP is defined as an entity that (i) is licensed to operate as a CCP and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs. The failure of a CCP to achieve QCCP status could result in significant costs to its bank customers.

DCOs (discussed further below). Therefore, the Commission is proposing to restore DCOs' exemption from §§ 1.59, 1.63, and 1.69 by removing "clearing organization" from the definition of "self-regulatory organization" in each of those regulations. The Commission is also proposing to amend § 1.64 to remove language that makes clear that the provision does not apply to DCOs. The amendments to the other provisions make that language no longer necessary.

III. Amendments to Part 39—Subpart A—General Provisions Applicable to DCOs

A. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. Since § 39.2 was adopted, the Commission has adopted definitions for some of the same terms that apply in other Commission regulations. Accordingly, the Commission is proposing amendments to § 39.2 in order to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms.

1. Business Day

Regulation 39.19(b)(3) defines "business day," but because the definition is contained within § 39.19, it is not clear that it is applicable to uses of the term "business day" elsewhere in part 39. The Commission is therefore proposing to remove § 39.19(b)(3) and include the definition of "business day" in § 39.2. The Commission also is proposing to clarify that the term "Federal holidays" in the "business day" definition refers to the schedule of U.S. federal holidays established under 5 U.S.C. 6103. The Commission is specifying this because some DCOs registered with the Commission are located outside the United States. Finally, the Commission is defining "foreign holiday" as a day on which a DCO and its domestic financial markets are closed for a holiday that is not a Federal holiday in the United States, and adding the term to the list of exceptions to the definition of "business day." The Commission believes there is no reason to require foreign DCOs to report on a non-trading day.

2. Customer

Regulation 39.2 defines "customer," for purposes of part 39, as a person trading in any commodity named in the definition of "commodity" in section 1a(9) of the CEA or in § 1.3 of the Commission's regulations, or in any

swap as defined in section 1a(47) of the CEA or in § 1.3. The definition further distinguishes a customer from the owner or holder of a house account.

After § 39.2 was adopted, the Commission amended the definition of "customer" in § 1.3, to mean any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest. The Commission also amended the definition of "commodity interest" in § 1.3 to include any swap as defined in the CEA, by the Commission, or jointly by the Commission and the Securities and Exchange Commission.

Because the definition of "customer" in § 1.3 now encompasses the definition in § 39.2, the Commission believes that the definition in § 39.2 is unnecessary and may create uncertainty. Therefore, the Commission is proposing to remove the definition of "customer" in § 39.2, leaving the definition in § 1.3 as the applicable definition for purposes of part 39.

3. Customer Account or Customer Origin

Regulation 39.2 defines "customer account or customer origin" as a clearing member account held on behalf of customers that is subject to section 4d(a) or section 4d(f) of the CEA. After § 39.2 was adopted, the Commission adopted the definition of "customer account" in § 1.3 to include both a futures account and a cleared swaps customer account, which are accounts subject to sections 4d(a) and 4d(f) of the CEA, respectively.

The Commission believes that having a definition of "customer account or customer origin" in § 39.2 and a definition of "customer account" in § 1.3 may create uncertainty. Because the part 39 regulations use both "customer account" and "customer origin" terms, the Commission is proposing to amend the definition of "customer account or customer origin" in § 39.2 to cross-reference the definition of "customer account" in § 1.3, rather than removing the definition or the term "customer origin."

4. Enterprise Risk Management

The Commission is proposing to define "enterprise risk management" because the term is used in proposed § 39.10(d), which is discussed below.

5. Fully-Collateralized Position

The Commission is proposing to define "fully-collateralized position" in

conjunction with proposed exceptions from several part 39 regulations for DCOs that clear fully-collateralized positions, as discussed below.

6. Key Personnel

The Commission is proposing to add "chief information security officer" to the list of positions identified in the definition of "key personnel" in § 39.2. In the event of a cybersecurity incident, it is critical that Commission staff be able to quickly contact the person at each DCO responsible for responding to the incident to assess the DCO's response as well as to coordinate efforts among DCOs as necessary.

B. Procedures for Registration—§ 39.3

1. Application Procedures—§ 39.3(a)

The Commission is proposing to make several changes to its procedures for registration as a DCO, set forth in § 39.3. Regulation 39.3(a)(1) refers to "[a]n organization desiring to be registered as a [DCO]," while § 39.3(a)(2) refers to "[a]ny person seeking to register as a [DCO]." To make the language consistent, the Commission is proposing to revise § 39.3(a)(1) and (2) to refer to an "entity seeking to register as a [DCO]." The Commission is proposing additional changes to § 39.3(a)(1) to improve the clarity of the text.

Regulation 39.3(a)(2) requires an applicant for DCO registration to submit to the Commission a completed Form DCO, which is provided in appendix A to part 39.¹⁴ Since the adoption of Form DCO, the Commission has identified several areas in which changes to Form DCO are needed. Many of the revisions to the part 39 regulations proposed herein would require corresponding changes to Form DCO. Therefore, the Commission is proposing to revise Form DCO as discussed in Section VI. below.

Regulation 39.3(a)(3) provides that at any time during the application review process, the Commission may request that the DCO applicant submit supplemental information in order for the Commission to process the application. An applicant is required to "file electronically" such supplemental information with the Secretary of the Commission, in the format and manner specified by the Commission. The Commission is proposing to amend § 39.3(a)(3) to require an applicant to "provide" such supplemental information and to delete the

¹⁴ At the time § 39.3(a)(2) was adopted, Form DCO was the only appendix to part 39. Since then, appendices have been added to part 39, and Form DCO is now set forth in appendix A. Therefore, the Commission is proposing to revise § 39.3(a)(2) to reference "Form DCO . . . as provided in appendix A to this part."

requirement that it be filed with the Secretary of the Commission. By making these changes, yet retaining the requirement that the information be provided in the format and manner specified by the Commission, the Commission and DCO applicants would have greater flexibility. For example, the Commission would be able to permit an applicant to provide requested information through a presentation to Commission staff.

Regulation 39.3(a)(5) provides for certain sections of a DCO application to be made public, including the “first page of the Form DCO cover sheet.” The regulation refers to Form DCO as it appears in the print edition of the Code of Federal Regulations. However, the Commission is aware that Form DCO may appear differently in other sources, so the Commission is proposing to amend § 39.3(a)(5) to specify that the “first page of the Form DCO cover sheet (up to and including the General Information section)” will be made public. The Commission is also proposing to revise the provision to include specific references to the Form DCO exhibits that will be made public.

Finally, the Commission is proposing to adopt new § 39.3(a)(6), which would permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. This provision would be similar to § 40.5(d)(2), which allows the Commission to extend the review period for rules submitted for Commission review and approval, if the registered entity that submitted the rule agrees in writing. The Commission believes it is important to have the ability to extend the review period for a DCO application so that, in the event that any issues or concerns arise that cannot be resolved in a timely manner, the Commission does not find itself in the position of having to deny the application.

2. Stay of Application Review—§ 39.3(b)

Regulation 39.3(b)(2) provides for delegation to the Director of the Division, with the concurrence of the General Counsel, the authority to notify an applicant “seeking designation under section 6(a) of the [CEA]” that the application is materially incomplete and the running of the 180-day period is stayed. By its terms, section 6(a) of the CEA applies only to designation of contract markets. However, under § 39.3(a), the Commission applies the same procedures to DCO applications. Because DCOs are “registered” and not “designated,” the Commission is

substituting “registration” for “designation” in § 39.3(b)(2).

3. Amendment of an Order of Registration—§ 39.3(a)(2)

Regulation 39.3(a)(2) specifies that any person seeking to register as a DCO, any applicant amending its pending application, and any registered DCO seeking to amend its order of registration must submit to the Commission a completed Form DCO, which must include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in appendix A to part 39. The Form DCO instructions correspond to this requirement and currently specify that requests for amending a registration order and any associated exhibits must be submitted via Form DCO.

The Commission is proposing to change the requirements regarding a DCO’s request to amend an order of registration. First, the Commission proposes to amend § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. Under current practice, a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Commission staff typically will review the request, obtain additional information from the DCO where necessary, and subsequently recommend to the Commission whether to grant or deny the amended order. Given current practice, the Commission believes that an updated Form DCO is not needed to request an amended order of registration. Second, the Commission proposes to amend § 39.3(a)(4) to state that an applicant only needs to file amended exhibits and other information when filing a Form DCO to update a pending application.

Consistent with existing Commission practice and the proposal to eliminate the use of Form DCO to request an amended registration order, the Commission is proposing new § 39.3(d) to establish a separate process for such requests. A DCO would be required to provide the Commission with any additional information and documentation necessary to review a request to amend an order of registration. The Commission would issue an amended order if the Commission determines that the DCO would continue to maintain compliance with the Act and the Commission’s regulations after such an amendment. Further, the Commission may also issue an amended order of registration subject to conditions. The Commission also

proposes to specify that it may decline to issue an amended order based upon a determination that the DCO would not continue to maintain compliance with the Act and the Commission’s regulations upon such amendment.

4. Dormant Registration—§ 39.3(d)

Regulation 39.3(d) establishes the procedure for a dormant DCO to reinstate its registration before it can begin “listing or relisting” products for clearing. The Commission is proposing to replace “listing or relisting” with “accepting” to more accurately describe a DCO’s activities. The Commission also proposes to renumber § 39.3(d) as § 39.3(e).

5. Vacation of Registration—§ 39.3(e)

Section 7 of the CEA and § 39.3(e) of the Commission’s regulations permit a DCO to request that the Commission vacate its registration. Orders of vacation of registration issued by the Commission have included requirements based on section 7 of the CEA and other Commission regulations that are not specifically listed in § 39.3(e). The Commission is proposing to amend § 39.3(e) to codify these requirements and provide greater transparency to any DCO that is considering vacating its registration. To implement the proposed changes, the Commission is proposing to renumber current § 39.3(e) as § 39.3(f)(1).

Section 7 of the CEA requires any registered entity that wishes to have its registration vacated to make a written request to the Commission. Section 7 also requires that the request be made at least 90 days prior to the date on which the registered entity wants the vacation to take effect. The Commission is proposing to adopt § 39.3(f)(1)(i) to specifically require a DCO to state in its request the date it wishes to have its registration vacated and to make the request at least 90 days prior to that date.

The Commission is also proposing to adopt § 39.3(f)(1)(ii) to require a DCO to state in its request how it intends to transfer or otherwise unwind all open positions at the DCO. Under the proposed rule, any actions to transfer or unwind positions would be required to reflect the interests of affected clearing members and their customers. The Commission believes this requirement will help ensure that a DCO that plans to voluntarily cease its clearing activity will do so with minimal disruptions to its members and the markets it serves.

The Commission is proposing to adopt § 39.3(f)(1)(iii) and (iv) to require a DCO to continue to maintain its books and records after its registration has

been vacated for the requisite statutory and regulatory retention periods, and to require a DCO to make all such books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as set forth in § 1.31 of the Commission's regulations. The Commission has included this requirement in previous orders of vacation based on § 39.3(f), which states that a vacation of registration "shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the entity was registered with the Commission."¹⁵ The Commission is proposing this requirement to further ensure that a DCO does not destroy its books and records in order to hinder or avoid Commission action following the vacation of its registration.

Finally, section 7 of the CEA requires the Commission to "forthwith send a copy" of the notice that was filed with the Commission requesting vacation and the order of vacation to all other registered entities. The Commission is proposing to adopt § 39.3(f)(2) to specify that this requirement will be met by posting the required documents on the Commission's website. This provision was written and amended before the internet expanded to its current form and level of access.¹⁶ The Commission believes that posting the required documents on its website is the most effective and efficient way of providing the required information to all registered entities, as well as the public.

6. Request for Transfer of Registration and Open Interest—§ 39.3(f)

Regulation 39.3(f) establishes procedures that a DCO must follow to request the transfer of its DCO registration and positions comprising open interest for clearing and settlement, in anticipation of a corporate change. Regulation 39.3(f) also pertains to instances in which a corporate change results in the transfer of all or substantially all of a DCO's assets to another legal entity.

Commission staff has found that the requirements of § 39.3(f) have created confusion for DCOs which merely want

to convert the DCO from one type of legal entity to another or change the place of domicile for the DCO's legal entity without changing the DCO's operations or transferring the DCO's registration to new ownership. The Commission also recognizes that a transfer of open interest would not necessarily be tied to a corporate change.¹⁷ For example, a DCO may wish to transfer open interest to another DCO that is also a subsidiary of the same parent company, or to another DCO in connection with ceasing its clearing services for a particular product.

To separate the procedures for a request to transfer open interest from those procedures to report a change to the DCO's corporate structure or ownership, the Commission is proposing changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest and remove references to transfers of registration and requirements regarding corporate changes. Proposed § 39.3(g) would only apply to instances in which a DCO requests to transfer its open interest. Changes to the DCO's ownership would continue to be addressed under § 39.19(c)(4)(viii) (proposed to be renumbered as § 39.19(c)(4)(ix)). Additionally, as discussed further below, the Commission is proposing to require a DCO to report a change to the legal name under which it operates in proposed § 39.19(c)(4)(xi). The Commission is also proposing conforming changes to § 39.19(c)(4)(ix) to remove cross-references to § 39.3(f).

Under the proposed amendments to § 39.3(g), a DCO seeking to transfer its open interest would be required to submit rules for Commission approval pursuant to § 40.5,¹⁸ rather than submitting a request for an order at least three months prior to the anticipated transfer. In an effort to simplify the existing requirements, the proposed change would permit the transfer to take effect after a 45-day Commission review period. The 45-day review period would be intended to ensure that clearing members are made aware of the intended transfer and to determine whether the transferee DCO is suitable to take on the transfer¹⁹ and would be

able to continue to operate in compliance with the CEA and the Commission's regulations. As part of its submission pursuant to § 40.5, the DCO would be required to include: (1) The underlying agreement that governs the transfer; (2) a description of the transfer, including the reason for the transfer and its impact on the rights and obligations of clearing members and market participants holding positions that comprise the DCO's open interest; (3) a discussion of the transferee's ability to comply with the CEA, including the DCO Core Principles, and the Commission's regulations thereunder; (4) the transferee's rules marked to show changes that would result from acceptance of the transferred positions; (5) a list of products for which the DCO requests transfer of open interest; and (6) a representation by the transferee that it is in and will maintain compliance with the CEA, including the DCO Core Principles, and the Commission's regulations thereunder upon transfer of the open interest.

C. Procedures for Implementing DCO Rules and Clearing New Products

1. Request for Approval of Rules—§ 39.4(a)

Regulation 39.4(a) specifies that an applicant for registration or a registered DCO may request, pursuant to the procedures set forth in § 40.5, that the Commission approve any or all of its rules prior to their implementation. In practice, the Commission's review of applications for DCO registration includes review of the applicant's rules, which are required to be submitted as Exhibit A-2 to Form DCO. The Commission's issuance of an order of registration as a DCO constitutes an approval of the applicant's rules that were submitted as part of the application. Accordingly, the Commission is proposing to delete the reference in § 39.4(a) to an applicant for registration, as it is unnecessary for an applicant to separately request approval of its rules.

2. Portfolio Margining—§ 39.4(e)

Regulation 39.4(e) establishes certain procedural requirements that apply to a DCO seeking approval for a futures account portfolio margining program. Under § 39.4(e), a DCO seeking to provide a portfolio margining program under which securities would be held in

¹⁵ To accommodate the proposed changes, the Commission is proposing to include this sentence as part of § 39.3(f)(1).

¹⁶ The requirement to send a copy of the notice and order was first included in section 7 in 1922. The Grain Futures Act, Public Law 67-331 ch. 369, sec. 7, 42 Stat. 1002 (1922). Section 7 was most recently amended in 2000, to cover all types of registered entities, including DCOs. Commodity Futures Modernization Act of 2000, Public Law 106-554, Title I, sec. 123(a)(17), 114 Stat. 2763 (2000).

¹⁷ The Commission notes, however, that a transfer of open interest in this regard would not be in the context of a default, which would typically involve a DCO transferring positions from one FCM to another FCM.

¹⁸ SIDCOs should consider whether the facts and circumstances of the approval sought pursuant to a § 40.5 filing also obligate a SIDCO to file a § 40.10 submission.

¹⁹ The Commission notes that, under the existing framework, positions cleared for U.S. customers must be cleared by a registered DCO, while

proprietary positions of U.S. persons may be cleared by registered or exempt DCOs. As a result, the Commission would need to ensure that the positions are transferred to an entity that is appropriately registered or exempt from DCO registration.

a futures account is required to petition the Commission for an order “under section 4d of the [CEA].” To conform terminology to other provisions in part 39 which distinguish between futures accounts subject to section 4d(a) of the CEA and cleared swaps accounts subject to section 4d(f) of the CEA, the Commission is proposing to substitute “section 4d(a)” for “section 4d” in § 39.4(e).

IV. Amendments to Part 39—Subpart B—Compliance With Core Principles

A. Compliance With Core Principles—§ 39.10

1. Chief Compliance Officer—§ 39.10(c)

Regulation 39.10(c)(1)(ii) requires that a DCO’s chief compliance officer (CCO) report to the board of directors or the senior officer of the DCO. The Commission recognizes that a legal entity registered as a DCO may engage in substantial activities not related to clearing, in which case it may be more appropriate for the CCO to report to the senior officer responsible for the DCO’s clearing activities. For example, traditionally, exchanges have had clearing operations as a component of their overall structure. In some instances, the exchange is the same legal entity as the DCO, and therefore, the senior officer of the entity would not necessarily be focused on the clearing operations. In light of this, the Commission is proposing to amend § 39.10(c)(1)(ii) to permit the CCO to report to the senior officer responsible for the DCO’s clearing activities. The Commission also is proposing to amend § 39.10(c)(4)(i) to permit the CCO to submit the annual report (which is discussed below) to the senior officer responsible for the DCO’s clearing activities.²⁰

Regulation 39.10(c)(3)(i) requires the CCO to prepare an annual report that contains a description of the DCO’s written policies and procedures, including the code of ethics and conflict of interest policies. The Commission is proposing to amend this requirement to allow a DCO to incorporate by reference the parts of its most recent CCO annual report containing such description, to the extent that the DCO’s written policies and procedures have not materially changed since they were most recently described in a previously submitted CCO annual report. This is intended to help make the process of

preparing the CCO annual report more efficient by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been described in a CCO annual report previously submitted to the Commission. However, to ensure that the descriptions remain current and easily accessible, the Commission is proposing to allow this incorporation by reference only to a CCO annual report submitted to the Commission within the five-year period prior to the date of the CCO annual report containing such incorporation by reference. The Commission believes that this timeframe is appropriate given the record retention requirements of § 39.20. The Commission wishes to stress that this ability to incorporate by reference only applies to descriptions of policies and procedures that have not materially changed and does not apply to the CCO’s assessment of their effectiveness or other requirements outside of § 39.10(c)(3)(i).

The Commission also is proposing to amend § 39.10(c)(3)(ii)(A), which requires the CCO to prepare an annual report that reviews each “core principle and applicable Commission regulation,” and with respect to each, identifies the compliance policies and procedures that are designed to ensure compliance “with the core principle.” In order to be consistent with the first part of the requirement, the Commission is proposing to change the language of the second part to “with each core principle and applicable regulation.” The Commission is further proposing to amend § 39.10(c)(3)(ii) to clarify that, for SIDCOs and subpart C DCOs, this includes the Commission’s regulations in subpart C of part 39. In addition, the Commission is further proposing to require that the compliance policies and procedures be identified “by name, rule number, or other identifier” to clarify that this provision is intended to require the CCO annual report to clearly and specifically identify the policies and procedures intended to comply with each core principle and applicable regulation.

Finally, § 39.10(c)(4)(i) requires the CCO to provide the annual report to the board of directors or senior officer of the DCO for review prior to submitting it to the Commission. The Commission is proposing to amend the provision to require that this process be described in the annual report, including providing the date on which the report was submitted to the board of directors or senior officer. The Commission notes that § 39.10(c)(4)(i) already requires the submission of the report to the board of directors or senior officer to be recorded

in the board of directors’ meeting minutes or otherwise, as evidence of compliance with this requirement. However, the Commission believes that it is reasonable to require similar disclosure in the CCO annual report so that compliance is evident outside the context of an examination of the DCO’s board of directors’ meeting minutes or other records. The Commission notes that some DCOs already describe this process in the cover letter submitted along with the CCO annual report, but the Commission prefers that this description appear in the annual report itself or in an annex, schedule, or exhibit attached to and included with the annual report. The Commission is also proposing to amend § 39.10(c)(4)(ii) by removing the requirement that the CCO annual report be submitted concurrently with the DCO’s fiscal year-end audited financial statement, to be consistent with a proposed change to § 39.19(c)(3)(iv) described below.

2. Enterprise Risk Management—§ 39.10(d)

The Commission is proposing to add new § 39.10(d)²¹ to specifically provide that a DCO is required to have a program of enterprise risk management, which would be defined in § 39.2 as an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise’s risk appetite and provides reasonable assurance that the DCO can continue to achieve its objectives, including compliance with the CEA and

²¹ The Commission is proposing to place the requirement for an enterprise risk management program in § 39.10, which codifies Core Principle A (pertaining to compliance with the DCO Core Principles generally), to emphasize the broad application of an enterprise risk management program to a DCO’s operations and services. The Commission previously declined to adopt an enterprise risk management requirement applicable to DCOs in a rulemaking pertaining to a specific Core Principle—Core Principle I, “System Safeguards”—because such a requirement “must be addressed in a more comprehensive fashion involving more than the system safeguards context alone, and thus are not appropriate for this rulemaking.” See System Safeguards Testing Requirements for Derivatives Clearing Organizations, 81 FR 64322, 64332 (Sept. 19, 2016). Other Commission regulations codify various specific aspects of risk management. For example, § 39.13 codifies Core Principle D, which focuses on market risk and credit risk; § 39.18 codifies Core Principle I, which addresses system safeguards; and § 39.27 codifies Core Principle R, which addresses legal risk. By including the enterprise risk management requirement in § 39.10, the Commission intends to underscore that a properly designed and managed enterprise risk management program covers all risks.

²⁰ Regulation 39.10(c)(3) also requires the CCO to “provide the annual report to the board of directors or the senior officer.” Because this requirement is set forth in greater detail in § 39.10(c)(4)(i), the Commission is proposing to remove, rather than amend, the language in § 39.10(c)(3).

Commission regulations. The proposed definition is intended to be applicable to a variety of corporate structures, including stand-alone DCOs, legal entities that are a DCO but also perform other functions (such as a DCM), and corporate groups that consist of a DCO and legally separate but affiliated entities.²²

An enterprise risk management program requires an entity to assess all potential risks it faces, including but not limited to systemic, cyber, legal, credit, liquidity, concentration, general business, operational, custody and investment, conduct, financial, reporting, compliance, governance, strategic, and reputational risks. An enterprise risk management program also requires the entity to identify and assess those risks on an enterprise-wide basis, meaning that it must consider whether individual risks across the organization and its affiliates are interrelated and may create a combined exposure to the entity that differs from the sum of the individual risks, and must measure, monitor, and manage such risks accordingly. Additionally, an enterprise risk management program requires an assessment of both the nominal or inherent risk that exists prior to the establishment of any risk mitigation activities (*i.e.*, controls) as well as the residual risk that remains once such mitigation activities or risk responses are taken into account.

Existing Commission regulations already require a DCO to manage its risks.²³ However, the Commission has found that some DCOs lack a formal enterprise risk management program that addresses their risks on an enterprise-wide basis. Therefore, proposed § 39.10(d)(1) and (2) would require a DCO to implement an enterprise risk management program

and establish and maintain an enterprise risk management framework.

Consistent with § 39.10(b), the Commission does not intend to be overly prescriptive by requiring specific standards and methodologies. A DCO should develop an enterprise risk management program that works best for its specific risk exposures, product types, customer base, market segment, and organizational structure, among other things, as long as the program meets the proposed minimum standards and any other legal and regulatory requirements.

Therefore, proposed § 39.10(d)(3) would require a DCO to follow generally accepted standards and industry best practices with respect to the development and ongoing monitoring of its enterprise risk management framework, assessment of the performance of the enterprise risk management program, and the management and mitigation of risk to the DCO. The Commission is mindful that best practices evolve and change over time and does not, therefore, wish to prescribe specific standards in its regulations.²⁴

The Commission has observed that some DCOs tend to “silo” responsibility for complying with their statutory and regulatory obligations given the diverse nature of the relevant risks. For example, risk management personnel might be primarily responsible for compliance with Core Principle D, while information technology personnel might be primarily responsible for managing the risks addressed by Core Principle I. To ensure that the enterprise risk management program is managed appropriately, the Commission is proposing § 39.10(d)(4), which would require a DCO to identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage

the DCO’s enterprise risk management function.²⁵

The enterprise risk officer would be required to have the authority, independence, resources, expertise, and access to relevant information necessary to fulfil the responsibilities of such position. The Commission believes that the independence of the enterprise risk officer is a critical factor in allowing such officer to operate effectively and has concerns about the potential for senior officers to interfere with the enterprise risk officer’s performance of his or her responsibilities. The Commission requests comment regarding whether the enterprise risk officer should be required to report directly to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks, whether such organization is the DCO or its corporate parent or other affiliate. The Commission also requests comment as to whether a DCO’s chief risk officer should be permitted to also serve as its enterprise risk officer.

B. Financial Resources—§ 39.11

Regulation 39.11 implements Core Principle B, which requires a DCO to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions and to cover its operating costs for a period of one year, as calculated on a rolling basis. The Commission is proposing to revise or clarify several aspects of § 39.11, including revising the language of § 39.11(a) to make it more consistent with Core Principle B.

1. Calculation of Largest Financial Exposure and Stress Tests—§ 39.11(a)(1), (c)(1) and (2).

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1) requires a DCO to perform “stress testing” in order to determine the

²² The term “enterprise-wide” is intended to require that the process of identifying, assessing, measuring, monitoring, and managing risk apply to the entire legal entity and its affiliates as a collective whole, with the objective to manage the risks to the DCO. A DCO would satisfy its obligations under paragraph (d)(1) (and paragraphs (d)(2) and (3), as discussed below) if it is part of a corporate group that has in place an enterprise risk management program that includes the DCO within its scope and complies with the requirements of this section.

²³ For example, § 39.11(a) requires a DCO to identify and adequately manage its general business risks; § 39.13(a) requires a DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures; and § 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed and addresses the monitoring and management of the entirety of those risks.

²⁴ In the interests of offering guidance to DCOs, however, the Commission notes that standards similar to those developed by the Committee of Sponsoring Organizations of the Treadway Commission or the International Organization for Standardization are currently among those that would reasonably be considered in the development of an enterprise risk management program. Although different standards may use different terminology for the same concept, these standards have some commonalities, such as the statement of risk appetite and the use of a risk register or logs to record any losses or risks above a given threshold. These standards are noted here to assist DCOs in identifying standards that they may wish to adopt or consider in designing and implementing their risk management frameworks; there may be other internationally-recognized standards that may be used in addition to or instead of the standards mentioned above. In the interests of transparency, a DCO should specify the standards or industry best practices it uses as part of its enterprise risk management program.

²⁵ The Commission is proposing to require that the DCO “identify,” rather than “designate,” the enterprise risk officer because, for certain corporate structures, the enterprise risk officer would most appropriately be an officer of a parent or other affiliate of the DCO. As a result, the DCO may not always be the entity that may properly “designate” the enterprise risk officer.

financial resources required to satisfy § 39.11(a)(1). As an initial matter, the Commission is proposing to change the wording to “stress tests” to use the term defined in § 39.2. This is not intended to change the meaning of § 39.11(c)(1).

Although § 39.11(c)(1) grants a DCO reasonable discretion in determining the methodology used to calculate its financial resources requirement, Commission staff has noted inconsistencies in how DCOs treat excess collateral on deposit when conducting stress tests. These inconsistencies lessen the usefulness of the stress tests. Accordingly, the Commission is proposing additional minimum requirements that a DCO would have to follow in determining its exposure in accordance with § 39.11(c)(1).

In particular, the Commission is proposing to add § 39.11(c)(2)(i)(A) ²⁶ to require a DCO to calculate its largest financial exposure net of the clearing member’s required initial margin amount on deposit. In other words, the DCO may not take into account excess collateral on deposit or initial margin required but not yet received. This would focus a DCO’s analysis on the resources that would actually be available to the DCO during times of stress and is consistent with recent guidance issued by CPMI-IOSCO suggesting that when assessing the adequacy of their financial resources, CCPs should take into account only prefunded financial resources and ignore voluntary excess contributions.²⁷ Consistent with this change, the Commission is proposing to remove § 39.11(b)(1)(i), which permits margin to be used to satisfy the requirements of § 39.11(a)(1), because the required initial margin amount on deposit for the clearing member will be applied before determining the largest financial exposure for the DCO in extreme but plausible market conditions. Therefore, the margin would not be available to also cover the exposure.

Additionally, the Commission is proposing § 39.11(c)(2)(ii) to require that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario.

Finally, the Commission is proposing several provisions designed to ensure customer funds are treated properly

when a DCO is calculating its largest financial exposure. Proposed § 39.11(c)(2)(i)(B) would require a DCO to use customer initial margin only to the extent permitted by parts 1 and 22 of the Commission’s regulations. Proposed § 39.11(c)(2)(iii) would clarify that when calculating its largest financial exposure, a DCO may net any gains in the house account with customer losses, if permitted by the DCO’s rules; however, a DCO may not net losses in the house account with gains in the customer account. Proposed § 39.11(c)(2)(iv) would further clarify that, with respect to a clearing member’s cleared swaps customer account, a DCO may net gains for one customer against losses for another customer only to the extent permitted by the DCO’s rules.

2. Assessments—§ 39.11(d)(2)

Regulation 39.11(d)(2) sets out certain conditions that apply to a DCO’s use of assessments for additional guaranty fund contributions in calculating the financial resources available to meet its obligations under § 39.11(a)(1). Regulation 39.11(d)(2)(iv) provides that the DCO shall only count the value of assessments, after a 30 percent haircut, “to meet up to 20 percent of those obligations.” The Commission has been advised that the phrase “those obligations,” which is a reference to the obligations discussed in the introductory language of § 39.11(d)(2), has created some uncertainty. Therefore, for clarity, the Commission is proposing to replace the phrase “those obligations” with “the total amount required under paragraph (a)(1) of this section.”

3. Liquidity of Financial Resources—§ 39.11(e)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.*, its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations as a central counterparty during a one-day settlement cycle. Regulation 39.11(e)(1)(ii) further requires that those resources include cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation (*i.e.*, cash or cash equivalents), in an amount greater than or equal to the average of its clearing members’ average pays over the last fiscal quarter.²⁸ If that

amount is less than what a DCO needs to fulfill its obligations during a one-day settlement cycle, § 39.11(e)(1)(iii) permits a DCO to take into account a committed line of credit for the purpose of meeting the remainder of the requirement.

The Commission’s intention was to require that at least a portion of a DCO’s default resources be sufficiently liquid to enable the DCO to complete a one-day settlement cycle and that these liquid resources include a certain amount of cash or cash equivalents. Then, if the cash or cash-equivalent amount was not sufficient to meet the total one-day settlement cycle liquidity requirement, a DCO could use a committed line of credit to make up the difference.²⁹ Regulation 39.11(b)(1), however, which sets forth the types of financial resources that can be considered as default resources, does not expressly permit the use of a committed line of credit;³⁰ it does permit the use of “[a]ny other financial resource deemed acceptable by the Commission.” The result is that § 39.11(b)(1) only permits a DCO to use a committed line of credit as part of its default resources if “deemed acceptable by the Commission,” while § 39.11(e)(1)(iii) seems to permit a DCO to use a committed line of credit as part of its default resources up to the amount needed to satisfy the “one-day settlement cycle” liquidity requirement after cash or cash equivalents have been applied. Accordingly, the Commission is proposing § 39.11(e)(3) to clarify that a committed line of credit or similar facility is a permitted default resource up to the amount provided for in § 39.11(e)(1)(ii), provided, however, that it is not counted twice to meet the requirements of § 39.11(e)(1)(ii) and § 39.11(e)(2).³¹ The Commission is also proposing clarifying changes to the text of § 39.11(e)(1)(iii) and (e)(2).

In addition, the Commission is proposing to change references to “daily settlement pay” in § 39.11(e)(1)(ii) to “daily settlement variation pay” in order to clarify that additional calls for

²⁹ See Financial Resources Requirements for Derivatives Clearing Organizations, 75 FR 63113, 63116 (Oct. 14, 2010) (proposed rule).

³⁰ In the notice of proposed rulemaking for § 39.11, the Commission noted that a committed line of credit or similar facility is not listed as a financial resource available to a DCO to satisfy the requirements of § 39.11(a)(1) and (2). The Commission further noted that a DCO may use a committed line of credit or similar facility only to meet the liquidity requirements set forth in § 39.11(e)(1) and (2). *Id.* See also Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69350 (affirming this approach).

³¹ The Commission is proposing to renumber current § 39.11(e)(3) as § 39.11(e)(4).

²⁶ The Commission is proposing to renumber current § 39.11(c)(2) as § 39.11(c)(3).

²⁷ See CPMI-IOSCO, Resilience of central counterparties: Further guidance on the PFMI (July 2017), Principles 4.2.4, 4.2.5, available at <https://www.bis.org/cpmi/publ/d163.pdf>.

²⁸ The Commission wishes to clarify that the cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation required to be held under § 39.11(e)(1)(ii) do not have to be attributable to the DCO’s own capital but can be attributable to any of the acceptable financial resources included in § 39.11(a)(1).

initial margin should not be included in the calculation.

4. Reporting Requirements—§ 39.11(f)

Regulation 39.11(f) sets forth reporting requirements for DCOs concerning the financial resources they are required to maintain pursuant to § 39.11(a). After § 39.11(f) was adopted, the Commission adopted §§ 39.33(a) and 39.39(d), which set forth financial resources requirements for SIDCOs and subpart C DCOs, and financial resources requirements for the recovery and wind-down plans of SIDCOs and subpart C DCOs, respectively. The Commission is proposing to amend several provisions of § 39.11(f) by adding the words “and §§ 39.33(a) and 39.39(d), if applicable,” to clarify that financial resources reporting by SIDCOs and subpart C DCOs should encompass all financial resources requirements applicable to them under part 39.

5. Financial Statements—§ 39.11(f)(1)(ii)

Regulation 39.11(f)(1)(ii) requires a DCO to file with the Commission each fiscal quarter, or at any time upon Commission request, a financial statement, including the balance sheet, income statement, and statement of cash flows, of the DCO or of its parent company. Since § 39.11(f)(1)(ii) was implemented, some DCOs have filed the financial statements of their parent companies. Because some of these DCOs are part of a complex corporate structure, Commission staff has had difficulty determining whether the entity covered by a particular financial statement is the true, direct parent of the relevant DCO, which, in turn, makes it difficult to accurately assess the financial strength of the DCO. Therefore, the Commission is proposing to revise § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company.

In further regard to § 39.11(f)(1)(ii), the Commission has received many inquiries concerning the accounting standards that apply to the preparation of the DCO's financial statements. Generally, Commission regulations require financial statements to be prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP).³² Therefore, the Commission would expect DCOs to provide financial statements prepared in accordance with U.S. GAAP. However, the Commission recognizes that DCOs organized outside the United States may prepare their financial statements in accordance with International Financial

Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB), or pursuant to other country-specific accounting standards. The Commission has permitted commodity pool operators to file commodity pool financial statements prepared in accordance with IFRS if the pool is organized under the laws of a foreign jurisdiction, and certain other conditions are met.³³

The Commission notes that the Securities and Exchange Commission (SEC) has adopted financial reporting requirements for securities clearing agencies that require U.S. GAAP, but permit the use of IFRS by clearing agencies that are “incorporated or organized under the laws of any foreign country.”³⁴ The SEC stated in its adopting release that it also recognizes the “advantages of financial statement disclosure that are limited to more widely applied bases of accounting and may offer more utility to market participants, regulators, and other stakeholders of clearing agencies.”³⁵ Therefore, it limited the different bases of accounting upon which annual audited financial statements may be prepared to IFRS and U.S. GAAP.³⁶

The Commission therefore is proposing to revise § 39.11(f)(1)(ii) to clarify that the financial statement must be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law, and in accordance with either U.S. GAAP or IFRS issued by the IASB for DCOs incorporated or organized under the laws of any foreign country.

In reviewing DCOs' financial statements, Commission staff has noted that assets allocated by the DCO to meet the requirements of § 39.11(a)(1) or (2) often are not identified accordingly. The Commission therefore is proposing in § 39.11(f)(1)(ii) and (f)(2)(i) (discussed below) to require that assets allocated by the DCO for such purpose must be clearly identified on the DCO's balance sheet as held for that purpose.

In addition, the Commission is proposing to renumber current § 39.11(f)(2) as § 39.11(f)(1)(iv) and amend it to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly financial report no later than 17 business days after the end of the DCO's fiscal quarter or at a later time as permitted by the Commission in its discretion in

response to a DCO's request for an extension.

6. Annual Reporting—§ 39.11(f)(2)

The Commission is proposing to revise § 39.11(f)(2) to set forth a DCO's annual financial reporting requirements (currently set forth in § 39.19(c)(3)(ii), which would also be revised) in the same way § 39.11(f)(1) sets forth a DCO's quarterly financial reporting requirements (which are cross-referenced in § 39.19(c)(2)).

In addition to its audited year-end financial statement, a DCO would be required to submit: (1) A reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the statements not misleading. Commission staff has encountered situations in which significant discrepancies exist between a DCO's financial statements for the last quarter of its fiscal year and its audited year-end financial statement. There is often a simple explanation for this, *e.g.*, the discrepancies reflect a material change in a given foreign exchange rate. The Commission believes a reconciliation will help explain these discrepancies and will aid its review of the DCO's financial statements.

7. Documentation Requirements—§ 39.11(f)(3)

Current § 39.11(f)(3) requires a DCO to provide to the Commission certain documentation related to its quarterly financial reporting.³⁷ The Commission has determined that requiring this documentation each quarter is unnecessary where there is no change from the prior submission. Therefore, the Commission is proposing to revise § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under current paragraphs (f)(3)(i) and (ii) (proposed to be renumbered as paragraphs (f)(3)(i)(A) and (i)(B)) only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter.

The Commission also is proposing to renumber § 39.11(f)(3)(iii), which concerns providing copies of agreements establishing or amending a credit facility, insurance coverage, or other arrangement, as § 39.11(f)(3)(ii),

³² See § 4.22(d)(2).

³⁴ 17 CFR 240.17Ad-22(c)(2)(ii).

³⁵ Clearing Agency Standards, 77 FR 66220, 66244 (Nov. 2, 2012) (final rule).

³⁶ See *id.*

³⁷ The documentation explains (1) the methodology used to compute financial resources requirements, and (2) the basis for the DCO's determinations regarding valuation and liquidity requirements.

³² See, *e.g.*, §§ 1.10(d)(3), 4.22(d), and 38.1101(b)(1).

and add language specifying that copies of the agreements should evidence or support the DCO's ability to meet applicable financial resources and liquidity resources requirements.

8. Certification—§ 39.11(f)(4)

After § 39.11 was adopted, the Division advised DCOs that the quarterly financial report required under paragraph (f) should be accompanied by a certification as to the accuracy of the report signed by the person responsible for the accuracy and completeness of the report.³⁸ Such certification is required for submission of annual chief compliance officer reports and Form 1–FR by FCMs, and is also appropriate in these circumstances.³⁹ The Commission is proposing to amend § 39.11(f)(4) to add this new requirement.

C. Participant and Product Eligibility—§ 39.12

Regulation 39.12 implements Core Principle C, which requires a DCO to establish admission and continuing eligibility standards for its members, as well as standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Several provisions in § 39.12 require a DCO to “adopt” or “establish” rules. The Commission is proposing to amend those provisions to require a DCO to “have” rules.⁴⁰

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. The Commission recognizes that some DCOs do not clear swaps and it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision. Therefore, the Commission is proposing to revise § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps.

³⁸ Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, June 7, 2012.

³⁹ See 17 CFR 39.10(c)(4)(ii) (requiring certification of annual reports by chief compliance officers); 17 CFR 1.10(d)(4) (requiring certification of financial reports submitted by FCMs and introducing brokers); see also 17 CFR 4.22(h) (requiring commodity pool operators to certify periodic and annual financial reports); 17 CFR 4.27(e)(1) (requiring commodity pool operators and commodity trading advisors to certify periodic reports).

⁴⁰ The Commission is also proposing to renumber paragraphs (a)(5)(i)(A) and (B) and (a)(5)(ii) of § 39.12(a)(5) as paragraphs (a)(5)(ii), (iii), and (iv), respectively.

D. Risk Management—§ 39.13

Regulation 39.13 implements Core Principle D, which establishes risk management standards for DCOs. The Commission is proposing to clarify several aspects of § 39.13.

1. Risk Management Framework—§ 39.13(b)

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a “[d]ocumentation requirement.” The Commission is proposing to replace “[d]ocumentation requirement” with “[r]isk management framework” and is also proposing to replace the words “establish and maintain” with “have and implement” to make it clear that a DCO is not only required to have a documented risk management framework but to put it into action.

2. Limitation of Exposure to Potential Default Losses—§ 39.13(f)

Regulation 39.13(f) requires a DCO to limit its exposure to potential losses from clearing member defaults to “ensure” that the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. The Commission recognizes that a DCO cannot ensure protection from that which it cannot anticipate. Therefore, the Commission is proposing to replace “ensure” with “minimize the risk” and make conforming changes to paragraphs (f)(1) and (2) of § 39.13.

3. Margin Requirements—§ 39.13(g)

a. Methodology and Coverage—§ 39.13(g)(2)

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks “include[] but [are] not limited to jump-to-default risk or similar jump risk.” The Commission is proposing to amend § 39.13(g)(2)(i) to note that such risks also include “concentration of positions.” Recent events, including a significant loss from a default at a central counterparty outside of the Commission's jurisdiction, highlight the importance of addressing those risks.

b. Independent Validation—§ 39.13(g)(3)

Regulation 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that the validation may be conducted by independent contractors or employees of the DCO, as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is proposing to amend this provision to specify that “on a regular basis” means annually and to also permit employees of an affiliate of the DCO to conduct the validations. Based on experience since the provision was adopted, the Commission believes an annual validation is sufficient. The Commission also believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations because, as with independent contractors or employees of the DCO, the main concern is that they not be persons responsible for development or operation of the systems and models being tested.

c. Spreads and Portfolio Margins—§ 39.13(g)(4)

The Commission is amending § 39.13(g)(4) to substitute the phrase “conceptual basis” for the phrase “theoretical basis” in the discussion of spread margin. This change would not alter the meaning of the rule but would simply make the terminology consistent with that used in the other Commission regulations.⁴¹

d. Back Tests—§ 39.13(g)(7)

The Commission is proposing new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

e. Gross Customer Margin—§ 39.13(g)(8)(i)

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). After the regulation was adopted, Division staff received several inquiries regarding whether the provision applied to intraday settlements as well as end-of-day settlements. In response, the Division advised DCOs that the provision requires a DCO to collect

⁴¹ See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 658 (Jan. 6, 2016).

customer initial margin on a gross basis during any settlement cycle (end-of-day or intraday) in which the DCO collects customer initial margin. The Division also asked DCOs to notify the Division, in writing, of any issues that could prevent a DCO from fully complying with this requirement.⁴²

Although § 39.13(g)(8)(i) does not differentiate between end-of-day and intraday collections of customer initial margin, there are significant operational issues that may affect the ability of clearing members to accurately determine the positions of individual customers on an intraday basis with respect to certain types of transactions (e.g., transfers, give-ups, and allocations of block orders) and with respect to certain types of market participants (e.g., locals and high frequency traders). Therefore, intraday gross margin calculations may result in some clearing members being charged too much margin and others being charged too little margin, which could necessitate significant end-of-day adjustments.

Regulation 39.13(g)(8)(i) is premised upon the ability of a DCO to accurately determine the initial margin amounts that would be required for each individual customer if each individual customer were a clearing member. Accordingly, the Commission is proposing to amend § 39.13(g)(8)(i) to require a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle, in light of the operational issues that may arise intraday. However, the Commission strongly encourages DCOs to collect customer initial margin from their clearing members on a gross basis during any intraday settlement cycle in which the DCOs collect customer initial margin, if they are able to calculate the margin accurately. The Commission requests comment as to whether this is the correct approach or whether there are other alternatives that would address the collection of intraday gross margin.

Currently, § 39.13(g)(8)(i)(B) provides that for purposes of calculating the gross initial margin requirement for clearing members' customer accounts, to the extent not inconsistent with other Commission regulations, a DCO may require its clearing members to report the gross positions of each individual customer to the DCO, or it may permit each clearing member to report the sum of the gross positions of its customers to the DCO. Regulation 39.13(g)(8)(i)(C)

further provides that for purposes of paragraph (g)(8), a DCO may rely, and may permit its clearing members to rely, upon the sum of the gross positions reported to the clearing members by each domestic or foreign omnibus account that they carry, without obtaining information identifying the positions of each individual customer underlying such omnibus accounts. In addition, § 39.19(c)(5)(iii) currently requires a DCO to file with the Commission, for each customer origin of each clearing member, the end-of-day gross positions of each beneficial owner, upon Commission request.

The Commission believes the ability to analyze positions at the customer level is a crucial element of an effective risk surveillance program. For example, a clearing member account that is composed of 1,000 customers each holding one contract poses substantially less financial risk to the clearing member and to the DCO than a clearing member account composed of one customer holding 1,000 contracts. The ability to identify those customers whose positions create the most risk to a DCO's clearing members would assist the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated.

When the part 39 regulations were adopted, the Commission determined to allow a DCO to permit its clearing members to report the sum of the gross positions of their customers to the DCO without obtaining information identifying the positions of each individual customer underlying such clearing members' omnibus accounts. The Commission also determined not to require routine reporting of end-of-day gross positions of each beneficial owner to the Commission, in part because of concerns about the difficulty that DCOs would have in obtaining this information.⁴³ Subsequently, however, the Commission adopted § 22.11(c), which requires FCMs to report customer information about swaps to DCOs.⁴⁴ Thus, for swaps, DCOs now have data that they did not have fully available to them at the time part 39 was adopted. Moreover, the Commission has established a reporting protocol for this

data, which can be used for submitting futures data as well.

To avoid a potential regulatory gap, the Commission is proposing to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This will enable DCOs, in turn, to report this information to the Commission, as discussed further below with respect to the proposed amendment to § 39.19(c)(1)(i)(D). Specifically, the proposed amendments to § 39.13(g)(8)(i)(B) would require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each beneficial owner within each customer origin of the clearing member.⁴⁵

f. Customer Initial Margin Requirements—§ 39.13(g)(8)(ii)

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, "for non-hedge positions, at a level that is greater than 100 percent of the [DCO]'s initial margin requirements with respect to each product and swap portfolio." Historically, DCMs had set customer initial margin requirements for their FCM members,⁴⁶ and the Commission stated that this provision simply shifts the responsibility for establishing customer initial margin requirements from DCMs to DCOs.⁴⁷ The Commission also noted its belief that requiring an FCM to collect higher customer initial margin for "non-hedge positions" provides a valuable cushion of readily available customer margin collateral.⁴⁸

After § 39.13(g)(8)(ii) was adopted, the Division issued interpretative guidance addressing several aspects of the regulation in response to a request from Chicago Mercantile Exchange, Inc. (CME), a registered DCO.⁴⁹ The Commission is proposing to amend § 39.13(g)(8)(ii) in a manner consistent

⁴⁵ In this regard, the Commission is also proposing to amend § 39.13(g)(8)(i)(B) by changing "may" to "shall," deleting "to the extent not inconsistent with other Commission regulations" and "or it may permit each clearing member to report the sum of the gross positions of its customers to the derivatives clearing organization," deleting paragraph (C), and renumbering paragraphs (D) and (E).

⁴⁶ The Commission is proposing to amend § 39.13(g)(8)(ii) and (iii) to clarify that these provisions apply to FCM clearing members only.

⁴⁷ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69377.

⁴⁸ *Id.* at 69378.

⁴⁹ CFTC Letter No. 12–08 (Sept. 14, 2012); *see also* Letter from Lisa Dunskey, Executive Director and Associate General Counsel, Chicago Mercantile Exchange Inc., to Ananda Radhakrishnan, Director, Division of Clearing and Risk (Aug. 29, 2012).

⁴² Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, July 19, 2012.

⁴³ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69375, 69400.

⁴⁴ Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336, 6376 (Feb. 7, 2012) (codified at 17 CFR 22).

with the interpretative guidance provided in the Division's letter, as discussed further below.

In its request, CME asked for clarification as to the meaning of the term "non-hedge positions." CME explained that DCM requirements for collection of higher customer initial margin had been applied historically on an account, rather than a position, basis. Under existing rules or practices at various DCMs, exchange members, market makers, market professionals, and certain other categories of customers had been subject to the clearing initial margin requirement; *i.e.*, such exchange member accounts were designated as "hedge" or "member," and by virtue of this designation, received the lower clearing initial margin rate, even though there may have been speculative positions in the accounts.

CME also inquired as to the applicability of § 39.13(g)(8)(ii) to non-clearing FCM customer omnibus accounts at clearing FCMs. CME stated that a non-clearing FCM's customer omnibus account may be comprised of both hedge accounts and speculative accounts, and the clearing FCM typically did not know the identity of the underlying customers in a non-clearing FCM's omnibus account. The non-clearing FCM sets customer initial margin requirements based on whether a customer account is designated as "hedge" or "speculative." Thus, a speculative account included within an omnibus account already would have been assessed the higher customer initial margin requirement by such customer's non-clearing FCM. If the clearing FCM were required to apply the higher customer initial margin rate to the entire customer omnibus account, this would require the non-clearing FCM to either (1) post more collateral with the clearing FCM than the amount actually collected from its hedge customers in the omnibus account, or (2) collect the higher customer initial margin requirement from its hedge customers so that it could post this collateral with the clearing FCM.

In its response to CME's request, the Division stated that it interprets § 39.13(g)(8)(ii) "in a manner that preserves the historical customer margining practices applicable to FCMs . . . [noting that] FCMs are expected to continue the practice of collecting customer initial margin at a level higher than the minimum required, if such action is warranted based on the unique risk profile of an individual customer." The Commission agrees with such interpretation and accordingly, is proposing to revise § 39.13(g)(8)(ii) to

permit DCOs to continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account.

The Commission therefore proposes to amend § 39.13(g)(8)(ii) by deleting the reference to "non-hedge" positions, changing the reference to "a level that is greater than 100 percent" to "a level that is not less than 100 percent," clarifying that the customer initial margin level is measured against "clearing" initial margin requirements, and explicitly stating that customer initial margin levels must be "commensurate with the risk presented by each customer account."

The Commission believes that establishing a bright-line test to determine the appropriate percentage by which customer initial margin requirements must exceed clearing initial margin requirements with respect to any particular types of customer accounts is inappropriate because the circumstances for each DCO and the nature of its clearing members and their customers vary. In adopting § 39.13(g)(8)(ii), the Commission noted that the percentage "should be based on the nature and volatility patterns of the particular product or swap portfolio, and the DCO's related evaluation of the potential risks posed by customers in general to their clearing members and, in turn, the potential risks posed by such clearing members in general to the DCO, rather than the creditworthiness of particular customers."⁵⁰ The Commission requests comment as to whether it should add standards or further direction in § 39.13(g)(8)(ii), or provide guidance to further clarify what would be considered "commensurate with the risk presented," similar to the Commission's statement in the adopting release noted above.

The Commission is proposing to amend the language in § 39.13(g)(8)(ii) that gives the DCO reasonable discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements with respect to particular products or portfolios, by replacing "the percentage by which" with "whether and by how much." However, the proposed amendments to § 39.13(g)(8)(ii) would give the Commission the ability to require different customer initial margin levels if the Commission deems the levels

insufficient to protect the financial integrity of the DCO or its clearing members. Since the adoption of § 39.13(g)(8)(ii), DCOs have typically added a 10 percent increase to the clearing initial margin requirement to set the higher customer initial margin requirement. The Commission has generally found this to be adequate in ordinary market conditions.

g. Haircuts—§ 39.13(g)(12)

Regulation 39.13(g)(12) requires a DCO to apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations. This provision also requires a DCO to evaluate the appropriateness of the haircuts "on at least a quarterly basis." Regulation 39.11(d)(1) requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a). The Commission is proposing to amend § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that DCOs evaluate the appropriateness of the haircuts that they apply to assets accepted in satisfaction of initial margin obligations on a monthly basis. Given that initial margin is held for risk management purposes, and the value of these assets change frequently, the Commission believes it would be more appropriate to assess haircuts more frequently.

4. Other Risk Control Mechanisms—§ 39.13(h)

a. Risk Limits—§ 39.13(h)(1)

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission is proposing to clarify that such risk limits should also be imposed to address positions that may be difficult to liquidate. This might be the case, for example, in instances where a position in a particular contract or swap is concentrated with a particular member, such that there is reason to doubt whether, in the event that this member defaults, other members would be willing and able to accept, collectively, the entirety of that position or swap. As noted above, in section IV.D.3.a, recent events highlight the importance of imposing risk limits to address positions that may be difficult

⁵⁰ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69378.

to liquidate, particularly concentrated positions.

b. Clearing Members' Risk Management Policies and Procedures—§ 39.13(h)(5)

Regulation 39.13(h)(5)(i) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is proposing to clarify that DCOs should, having conducted such reviews, “take appropriate actions to address concerns identified in such reviews,” and that the documentation of the reviews should include “the basis for determining what action was appropriate to take.” The Commission notes that, where a DCO is required to conduct any type of review under Commission regulations, similar remediation and documentation is expected. Absent such follow-up, the reviews would lack purpose.

5. Cross-Margining Arrangements—§ 39.13(i)

A cross-margining arrangement allows a DCO to provide offsets or reductions in required margin between products that it and another DCO (or other clearing organization) clear if the risk of one product is significantly and reliably correlated with the risk of the other product. The Commission approved the first cross-margining arrangement in 1988, and it has approved many such arrangements since.⁵¹ Proposed

§ 39.13(i) would codify the Commission's existing practices for evaluating cross-margining arrangements.⁵²

In evaluating cross-margining arrangements, the Commission reviews: (1) The methodology to be used to calculate margin requirements for the positions subject to the cross-margining arrangement; (2) the correlation between the positions, including the stability of the relationship among the eligible products and the potential impact a change in the correlation could have on setting margin requirements; (3) the impact on the settlement process; and (4) the application of default procedures, including any loss-sharing arrangements, pursuant to the proposed arrangement. If only one of the clearing organizations participating in the arrangement is a registered DCO, the Commission looks at additional factors, including the other clearing organization's status with and oversight by other regulator(s). Also, if one of the clearing organizations is organized outside of the United States, the Commission evaluates the bankruptcy treatment in that clearing organization's jurisdiction. Finally, the Commission considers the impact of the cross-margining arrangement, if any, on the DCO's ability to comply with the DCO Core Principles, particularly those concerning financial resources and risk management. The Commission requests comment as to whether there are other factors the Commission should consider and, therefore, other information that it should request. The Commission is proposing to require a DCO to provide the relevant information needed to facilitate its review as part of a rule filing submitted for Commission

accounts of OCC clearing members; and a February 29, 2008 order approving the establishment of a non-proprietary cross-margining agreement between the OCC and ICE Clear US, Inc. The Commission has also allowed cross-margining programs into effect without Commission approval including, but not limited to, a proprietary cross-margining program between CME and the London Clearing House (allowed into effect without approval on March 23, 2000).

⁵² In February 2015, CPMI-IOSCO issued a Level 2 assessment report on implementation of the PFMI by CCPs and trade repositories in the U.S. (Implementation Report). See CPMI-IOSCO, Implementation monitoring of PFMI: Level 2 assessment report for central counterparties and trade repositories—United States (Feb. 2015), available at <http://www.bis.org/cpmi/publ/d126.pdf>. The Implementation Report noted that Commission regulations do not explicitly address cross-margining, and in particular, the risk management requirements necessary where two or more CCPs participate in cross-margining arrangements. The Commission notes that existing DCO Core Principles and regulations regarding risk management, treatment of customer funds, default and settlement procedures, taken as a whole, address cross-margining arrangements.

approval pursuant to § 40.5. The Commission requests comment as to whether this would be the appropriate process or whether a more or less detailed review process is appropriate given the factors and risks involved.

E. Treatment of Funds—§ 39.15

Regulation 39.15 implements Core Principle F, which requires a DCO to establish standards and procedures designed to protect its clearing members' funds, hold such funds in a manner that would minimize the risk of loss or delay in the DCO's access, and invest such funds in instruments with minimal credit, market, and liquidity risks. The Commission is proposing to amend certain aspects of § 39.15.

1. Segregation of Customer Funds—§ 39.15(b)(1)

Regulation 39.15(b)(1) requires a DCO to comply with the applicable segregation requirements of section 4d of the CEA and Commission regulations thereunder, or any other applicable Commission regulation or order requiring that customer “funds and assets” be segregated, set aside, or held in a separate account. Section 4d of the CEA refers to customer “money, securities and property.” Therefore, the Commission is proposing to amend § 39.15(b) to clarify that “funds and assets” are equivalent to “money, securities, and property” in order to better align the language of the regulation with the language in the statute.

2. Commingling in Cleared Swaps Customer Account—§ 39.15(b)(2)(i)

Regulation 39.15(b)(2)(i) requires a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the CEA (i.e., the cleared swaps customer account). The Commission is proposing to revise § 39.15(b)(2)(i) to clarify that a DCO that wants to commingle foreign futures and foreign options with swaps must meet the same requirements.

3. Commingling in Futures Customer Account—§ 39.15(b)(2)(ii)

Regulation 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property

⁵¹ The Commission has issued a number of cross-margining program orders, including, but not limited to: A June 1, 1988 order approving a proprietary cross-margining system between the Intermarket Clearing Corporation (ICC) and Options Clearing Corporation (OCC), as expanded by a November 26, 1991 order approving the addition of cross-margining of positions of market professionals in non-proprietary accounts of participating clearing members to the ICC/OCC cross-margining program, 56 FR 61406 (Comm. F. T. Comm'n Dec. 3, 1991), and as further amended by a January 22, 1996 order to incorporate the provisions of appendix B, Framework 1 to the Commission's part 190 Regulations; a September 26, 1989 order approving a proprietary cross-margining system between OCC and CME, as expanded by a November 26, 1991 order approving the addition of cross-margining of positions of market professionals in non-proprietary accounts of participating clearing members to the OCC/CME cross-margining program, 56 FR 61404 (Comm. F. T. Comm'n Dec. 3, 1991); a June 2, 1993 order approving the proposals of CME and ICC to implement a tri-lateral cross-margining program with OCC, as further amended by a January 22, 1996 amended order to reflect the approval of proposed changes to the CME/ICC/OCC cross-margining amendments for proprietary and market professional accounts to incorporate the provisions of appendix B, Framework 1 to the Commission's part 190 Regulations; a November 5, 2004 order approving the establishment of an internal cross-margining program that permits cross-margining of positions of market professionals in internal non-proprietary

received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the CEA. The Commission is proposing to revise § 39.15(b)(2)(ii) to clarify that a DCO that wants to commingle foreign futures and foreign options with futures and options must meet the same requirements as a DCO that wants to commingle swaps with futures and options.

Further, when § 39.15(b)(2)(ii) was first promulgated, the Commission, in reference to its decision to require an order rather than a rule approval to commingle cleared swaps with futures in a futures account, stated “at this time, it is appropriate to provide these additional procedural protections before exposing futures customers to the risks of swaps that may be commingled in a futures account.”⁵³ The Commission, however, acknowledged that “as the Commission and the industry gain more experience with cleared swaps, the Commission may revisit this issue in the future.”⁵⁴ The Commission now believes that a request for a rule approval that complies with § 40.5 will provide the Commission with sufficient means to determine whether customer funds held in a futures account will be adequately protected if cleared swaps, foreign futures, or foreign options are also held in the account.

Therefore, the Commission is proposing to revise § 39.15(b)(2)(ii) to require a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle swaps, foreign futures, or foreign options with futures and options in an account subject to the requirements of section 4d(a) of the CEA.

4. Commission Action—§ 39.15(b)(2)(iii)

Regulation 39.15(b)(2)(iii) provides that the Commission may “grant approval of” a rule submission filed under § 39.15(b)(2)(i) in accordance with § 40.5. The Commission is proposing to replace the words “grant approval of” with “approve” in order to be consistent with the language used in § 40.5(b). Further, the Commission is proposing to amend § 39.15(b)(2)(iii) to reflect the proposed changes to § 39.15(b)(2)(ii). Specifically, the Commission is proposing to eliminate § 39.15(b)(2)(iii)(A) and (B) and include the content of both paragraphs within § 39.15(b)(2)(iii).

5. Transfer of Customer Positions—§ 39.15(d)

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer.

Some DCOs have noted that, although a DCO may transfer positions from one clearing member to another, the DCO does not generally transfer funds. The DCO simply adjusts the amount of margin due from, or owed to, each clearing member during the next collection cycle. Moreover, the receiving clearing member may not owe additional funds if it has sufficient excess margin funds on deposit at the DCO. The DCO may only transfer funds if it has already collected variation margin from the transferring clearing member and positions were transferred at the trade price. In addition, any excess margin held by the transferring clearing member would be transferred to the receiving clearing member.

Accordingly, the Commission is proposing to amend § 39.15(d) to delete the words “at the same time,” thus requiring the “prompt,” but not necessarily simultaneous, transfer of a customer's positions and related funds. The Commission is further amending the provision to require the transfer of related funds “as necessary,” recognizing that the transfer of customer positions will not always require the transfer of funds.

6. Permitted Investments—§ 39.15(e)

Regulation 39.15(e) requires any investment of customer funds or assets by a DCO to comply with § 1.25, as if all such funds and assets comprise customer funds subject to segregation pursuant to section 4d(a) of the CEA and Commission regulations thereunder. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. The Commission has since adopted the part 22 regulations and therefore is proposing to amend § 39.15(e) to clarify that the requirement applies to any investment of customer funds or assets, including cleared swaps customer collateral as defined in § 22.1.

F. Default Rules and Procedures—§ 39.16

Regulation 39.16 codifies Core Principle G, which requires a DCO to

have rules and procedures designed to allow for the efficient, fair, and safe management of events during which a clearing member becomes insolvent or otherwise defaults on its obligations to the DCO. Core Principle G also requires a DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures while continuing to meet its obligations. The Commission is proposing to amend certain aspects of § 39.16.⁵⁵

1. Default Management Plan—§ 39.16(b)

Regulation 39.16(b) requires a DCO to have a default management plan and, among other things, test the plan at least on an annual basis. A DCO's default management plan involves its clearing members, so the Commission believes the plan cannot be tested effectively without the clearing members' participation. Accordingly, the Commission is proposing to amend § 39.16(b) to add a requirement that the DCO include clearing members in a test of its default management plan on at least an annual basis. A DCO should ensure that a sufficient portion of its clearing membership participates in such testing and is therefore prepared to support the DCO's default management efforts.

2. Default Procedures—§ 39.16(c)

Regulation 39.16(c) requires a DCO to adopt procedures that would permit the DCO to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by one of its clearing members. The Commission is proposing to amend § 39.16(c)(1) to require a DCO to have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the DCO is considering. The default committee would be required to include clearing members and could include other participants to help the DCO efficiently manage the house or customer positions of the defaulting clearing member.

The Commission also is proposing to amend § 39.16(c)(2)(ii) to require that a DCO have default procedures that include immediate public notice on the DCO's website of a declaration of default. The Commission believes it is important to the integrity and stability of the financial markets that clearing members, other CCPs, and the public

⁵³ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69392.

⁵⁴ *Id.*

⁵⁵ The proposed amendments to § 39.16 include replacing “adopt” with “have” where a DCO is required to adopt rules, consistent with the proposed changes to § 39.12 previously discussed.

become aware as soon as possible when a default has occurred. The Commission requests comment, however, as to whether the timing of the announcement would potentially impact the market or the DCO's ability to manage the default.

Finally, § 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is proposing to amend this provision to clarify that the DCO shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. This is intended to clarify that a clearing member that wishes to voluntarily bid for or accept more than its proportional share should be allowed to do so, provided that the clearing member has the ability to manage the risk of the new positions.

The Commission is proposing to further amend § 39.16(c)(2)(iii)(C) in order to clarify that the provision applies to both auctions and allocations and to provide that the size of the participating or accepting clearing member's positions in the same product class at the DCO should be measured by the clearing initial margin requirement for those positions. The Commission requests comment as to whether the Commission should require DCOs to take into consideration other indicators of active participation in a market, such as open interest, volume, and/or other criteria.

G. Rule Enforcement—§ 39.17

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and dispute resolution. Core Principle H also requires a DCO to have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant if it violates the DCO's rules. Finally, Core Principle H requires a DCO to report its rule enforcement activities and sanctions imposed on members and participants to the Commission. The Commission is proposing to amend § 39.17(a)(1) to clarify the Commission's expectation that DCOs currently do, and will continue to, ensure that both the DCO and its members comply with the DCO's rules.

Regulation 39.17(b) permits a DCO's board of directors to delegate its

responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee. The Commission recognizes that some DCOs delegate such responsibility to a committee other than the risk management committee. Therefore, the Commission is proposing to amend § 39.17(b) to replace "risk management committee" with "an appropriate committee."

H. Reporting—§ 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. In addition to clarifying existing requirements, the Commission is proposing to adopt additional reporting requirements that would allow the Commission to conduct more effective oversight of DCO compliance with the DCO Core Principles and Commission regulations.

1. General—§ 39.19(a)

The Commission is proposing to revise the text of § 39.19(a) to match the text of Core Principle J. The proposed revisions are not meant to alter the meaning of the provision.

2. Submission of Reports—§ 39.19(b)

Regulation 39.19(b)(1) requires a DCO to submit the information required by the section to be submitted to the Commission electronically and in a format and manner specified by the Commission, unless otherwise specified by the Commission or its designee. The Commission is proposing to delete "[u]nless otherwise specified by the Commission or its designee" and "electronically," requiring a DCO to submit the information in a format and manner specified by the Commission. This would simplify the text while retaining the flexibility the Commission originally intended. The Commission is proposing new § 39.19(b)(2) to require that when making a submission pursuant to the section, an employee of a DCO must certify that he or she is duly authorized to make such a submission on behalf of the DCO. This provision would codify existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19. Finally, the Commission is proposing to remove existing § 39.19(b)(3) and move the definition of "business day" to § 39.2, as previously discussed. Existing § 39.19(b)(2) would be renumbered as § 39.19(b)(3).

3. Daily Reporting of Information—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to report to the Commission on a daily basis margin, cash flow, and position information for each clearing member, by house origin and by each customer origin. The Commission is proposing to amend § 39.19(c)(1)(i) to require a DCO to additionally report margin, cash flow, and position information by individual customer account, which is information the DCOs currently provide. The Commission is specifying "individual customer account," as individual customers may have multiple accounts, which should be reported separately. The Commission is also proposing to have DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day positions, DCOs must report the positions themselves (*i.e.*, the long and short positions) as well as risk sensitivities and valuation data for these positions.

Risk-sensitivities are different measures of the impact of changes in underlying factors on the value of the positions. For example, an interest rate delta describes the theoretical profit or loss ("P&L") that results from a one basis point increase in a currency's interest rate curve. A delta ladder describes a series of sensitivities for different maturity points (tenors) where each "rung" represents an increasing maturity point or tenor along the zero rate curve term structure. Each value on the rung represents the P&L that the portfolio would experience if the interest rate for that tenor were to increase by one basis point, all else being equal. Thus, if the entire curve were to shift up by one basis point, the portfolio's theoretical P&L would be equal to the sum of all the individual sensitivities. In the context of options, examples of risk sensitivities would be the different Greeks—delta measures an option's price sensitivity relative to changes in the price of the underlying asset, gamma measures the sensitivity of delta in response to price changes in the underlying instrument, vega measures an option's sensitivity to changes in the volatility of the underlying, theta measures the time decay of an option.

Valuation data refer to variables and inputs that reflect current market conditions, as well as expectations for the future. In the case of credit default swaps, valuation models rely on for example, risk neutral default

probabilities of swaps, forward credit spreads for different maturities. For interest rate swaps, valuation models require discount factors.

The Commission intends to implement a range of different methodologies to conduct risk surveillance of cleared derivatives exposures, some involving full revaluation of portfolios and others relying on delta ladders and other risk sensitivities. Collectively, the enhanced information sets will enable Commission staff to run stress tests; identify concentration and risk in currencies and in maturity buckets; perform back testing; validate guaranty funds; and validate variation margin.

4. Daily Reporting on Securities Positions—§ 39.19(c)(1)(ii)(C)

Regulation 39.19(c)(1)(i) requires DCOs to submit certain information to the Commission on a daily basis, *e.g.*, initial margin requirements, initial margin on deposit, daily variation margin, other daily cash flows such as option premiums, and end-of day positions. Paragraph (c)(1)(ii)(C) further instructs DCOs to provide the required information for all securities positions that are held in a customer account subject to section 4d of the CEA or are subject to a cross-margining agreement. Paragraph (c)(1)(ii)(C) was added to clarify the applicability of daily reporting requirements to securities positions carried by FCMs that are also registered broker-dealers.

Since the adoption of § 39.19(c)(1), the Commission has become aware of a potential ambiguity in the wording of paragraph (c)(1)(ii)(C), which requires the reporting of all securities positions “that are held in a customer account subject to section 4d of the Act or are subject to a cross-margining agreement.” The ambiguity concerns whether the reporting requirement for securities positions subject to a cross-margining agreement applies to customer positions only or to any position subject to a cross-margining agreement, whether house or customer.

Reporting of securities positions is designed to capture positions that could have an impact on the risks a DCO must manage. Because risks associated with securities positions subject to a cross-margining agreement would be relevant to the DCO’s risk management function and therefore the Commission’s risk surveillance program, all such securities positions, whether house or customer, were intended to be included in daily reporting. In order to avoid ambiguity and more precisely articulate the scope of paragraph (c)(1)(ii)(C), the Commission is proposing to insert

subordinate paragraph numbering between the clauses in paragraph (c)(1)(ii)(C) which relate to securities positions held in a customer account or subject to a cross-margining agreement.

5. Quarterly Reporting—§ 39.19(c)(2)

Regulation 39.19(c)(2) requires a DCO to provide the financial resources report required by § 39.11(f). The Commission adopted § 39.19(c)(2) so that each DCO reporting requirement would be included in § 39.19. The Commission is proposing to revise the text of § 39.19(c)(2) to be more consistent with the text of § 39.11(f); *i.e.*, a DCO would be required to provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the DCO’s financial resources as required by § 39.11(f)(1).

6. Audited Year-End Financial Statements—§ 39.19(c)(3)(ii)

Regulation 39.19(c)(3)(ii) requires a DCO to file with the Commission its audited year-end financial statements or, if there are no financial statements available for the DCO, the consolidated audited year-end financial statements of the DCO’s parent company. As with the quarterly filing requirements of § 39.11(f)(1)(ii), the purpose of requiring a DCO to submit year-end financial statements is to enable the Commission to assess the financial strength of the DCO. However, if a DCO is part of a large and complex corporate structure and files its parent company’s financial statements, it can be difficult for the Commission to assess the financial strength of the DCO itself. Therefore, the Commission is proposing to amend § 39.19(c)(3)(ii) to require the audited year-end financial statements of the DCO.

7. Time of Report—§ 39.19(c)(3)(iv)

Regulation 39.19(c)(3)(iv) requires a DCO to submit concurrently to the Commission all reports required by paragraph (c)(3) not more than 90 days after the end of the DCO’s fiscal year. The Commission may provide an extension of time only if it determines that a DCO’s failure to submit the report in a timely manner “could not be avoided without unreasonable effort or expense.”⁵⁶ The Commission is proposing to eliminate this requirement to provide it with the flexibility to grant extensions under additional circumstances when appropriate.

Additionally, the Commission is proposing to remove the requirement

that reports be submitted concurrently in order to provide DCOs with the flexibility to submit reports required under § 39.19(c)(3) as they are completed. The Commission recognizes that one report may be completed sooner than the other and believes it would benefit the Commission’s oversight of the DCO if the Commission could begin reviewing the report as soon as it is ready.

8. Decrease in Financial Resources—§ 39.19(c)(4)(i)

The Commission is proposing a technical amendment to § 39.19(c)(4)(i), which concerns reporting of a decrease in a DCO’s financial resources. The amendment would add a reference to the financial resources requirements of § 39.33, which applies to SIDCOs and subpart C DCOs. The Commission also is proposing to renumber the subordinate paragraphs for the sake of clarity.

9. Decrease in Liquidity Resources—§ 39.19(c)(4)(ii)

The Commission is proposing to adopt new § 39.19(c)(4)(ii),⁵⁷ which would require the same reporting for a decrease in liquidity resources as that required by § 39.19(c)(4)(i) for a decrease in overall financial resources. The reporting required in § 39.11(f)(1)(ii) provides the Commission with notice of any change in a DCO’s liquidity resources over the course of a fiscal quarter. This new provision would provide the Commission with notice if a DCO has a significant decrease in liquidity resources over a short period of time, which could indicate there is a greater issue of which the Commission should be aware.

10. Request to Clearing Member To Reduce Positions—§ 39.19(c)(4)(vi)

The Commission is proposing to amend current § 39.19(c)(4)(v), proposed to be renumbered as § 39.19(c)(4)(vi), which requires a DCO to notify the Commission immediately of a request by the DCO to one of its clearing members to reduce the clearing member’s positions, by deleting the words “because the [DCO] has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the [DCO].” The Commission believes it should be

⁵⁶ The Commission delegated this authority to the Director of the Division of Clearing and Risk under § 140.94(c)(9).

⁵⁷ The Commission is proposing to renumber existing § 39.19(c)(4)(ii) and all subsequent paragraphs of § 39.19(c)(4).

notified of such a request regardless of the reason for the request.

**11. Change in Key Personnel—
§ 39.19(c)(4)(x)**

The Commission is proposing to amend current § 39.19(c)(4)(ix), proposed to be renumbered as § 39.19(c)(4)(x), which requires a DCO to report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The Commission proposes to clarify that the notification requirement applies to both temporary and permanent replacements, and that the report must include contact information.

**12. Change in Legal Name—
§ 39.19(c)(4)(xi)**

The Commission is proposing to adopt new § 39.19(c)(4)(xi), which would require a DCO to report a change to the legal name under which it operates. This requirement would help to ensure that DCO-specific information reflected on the Commission's website, as well as in the Commission's internal records, is accurate and up-to-date. The Commission notes, however, that the DCO's registration order (and other existing orders issued by the Commission) would not need to be changed to reflect the legal name change.

13. Change in Liquidity Funding Arrangement—§ 39.19(c)(4)(xiii)

The Commission is proposing to adopt new § 39.19(c)(4)(xiii), which would require a DCO to report a change in any liquidity funding arrangement it has in place. This requirement would be similar to that of § 39.19(c)(4)(x) (proposed to be renumbered as § 39.19(c)(4)(xii)), which requires a DCO to report any change in a credit facility funding arrangement it has in place. This will assist the Commission in overseeing the liquidity risk management of DCOs.

14. Change in Settlement Bank Arrangements—§ 39.19(c)(4)(xiv)

The Commission is proposing to adopt new § 39.19(c)(4)(xiv), which would require a DCO to report a change in its arrangements with any settlement bank used by the DCO or approved for use by the DCO's clearing members. Receiving such reporting will aid the Commission in monitoring a DCO's compliance with § 39.14(c), which sets forth specific requirements for settlement arrangements.

**15. Settlement Bank Issues—
§ 39.19(c)(4)(xv)**

The Commission is proposing to adopt new § 39.19(c)(4)(xv), which would require a DCO to report to the Commission no later than one business day after learning of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the DCO or approved for use by the DCO's clearing members.

16. Change in Depositories for Customer Funds—§ 39.19(c)(4)(xvi)

The Commission is proposing to adopt new § 39.19(c)(4)(xvi), which would require a DCO to report any change in its arrangements with any depositories at which the DCO holds customer funds. Receiving such reporting will aid the Commission in monitoring a DCO's compliance with section 4d of the CEA and related Commission regulations regarding the treatment of customer funds, including § 39.15(b).

**17. Change in Fiscal Year—
§ 39.19(c)(4)(xx)**

The Commission is proposing to adopt new § 39.19(c)(4)(xx), which would require a DCO to immediately notify the Commission of any change to the start and end dates for its fiscal year. Because several other required reports are tied to a DCO's fiscal year (*e.g.*, quarterly financial reports, annual report of the chief compliance officer), a change in the DCO's fiscal year would change the reporting periods and deadlines for those reports, and the Commission would need to know when those reports are to be submitted by the DCO.

18. Change in Independent Accounting Firm—§ 39.19(c)(4)(xxi)

The Commission is proposing to adopt new § 39.19(c)(4)(xxi), which would require a DCO to report to the Commission no later than one business day after any change in the DCO's independent public accounting firm. The report would include the date of such change, the name and contact information of the new firm, and the reason for the change.

19. Major Decision of the Board of Directors—§ 39.19(c)(4)(xxii)

The Commission is proposing to adopt new § 39.19(c)(4)(xxii) to codify in § 39.19 the requirement (currently in § 39.32(a)(3)(i) and proposed in § 39.24(a)(3)(i), as discussed further below) that a DCO report to the Commission any major decision of the DCO's board of directors.

**20. Margin Model Issues—
§ 39.19(c)(4)(xxiv)**

The Commission is proposing to adopt new § 39.19(c)(4)(xxiv), which would require a DCO to report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that affects the DCO's ability to calculate or collect initial margin or variation margin. The Commission is proposing this change because some DCOs have had unanticipated issues arise with the functioning of their margin models as a result of, among other things, the introduction of new products or significant increases in volatility.

**21. Recovery and Wind-Down Plans—
§ 39.19(c)(4)(xxv)**

The Commission is proposing to adopt new § 39.19(c)(4)(xxv), which would require a DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit its plans to the Commission no later than the date on which it is required to have the plans. The Commission is also proposing to permit a DCO that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, to submit the plans to the Commission. If a DCO subsequently revises its plans, the DCO would be required to submit the revised plans to the Commission along with a description of the changes and the reason for those changes. The Commission is proposing this requirement because § 39.39(b) requires certain DCOs to maintain recovery and wind-down plans, but there is currently no explicit requirement that the DCOs submit the plans to the Commission.

22. New Product Accepted for Clearing—§ 39.19(c)(4)(xxvi)

The Commission is proposing to adopt new § 39.19(c)(4)(xxvi), which would require a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing. The Commission is proposing this change because § 40.2 requires a DCM or SEF to make a submission to the Commission prior to listing a product for trading that has not been approved under § 40.3, but there is currently no comparable requirement applicable to DCOs.

The proposed notice would include: (1) A brief description of the new product; (2) the date on which the DCO intends to begin accepting the new product for clearing; (3) a statement as to whether the new product will require

the DCO to submit any rule changes pursuant to §§ 40.5 or 40.6; (4) a statement as to whether the DCO has informed, or intends to inform, its clearing members and/or the general public of the new product and, if written notice was given, a web address for or copy of such notice; and (5) an explanation of any substantive opposing views received from such outreach and how the DCO addressed such views or objections. The Commission believes receiving the notice 30 days before the DCO will begin accepting the product for clearing will allow Commission staff enough time to ask further questions of the DCO as necessary.

The Commission has not defined “product” for purposes of § 40.2 or § 40.3. The Commission requests comment on whether defining this term would be helpful in clarifying what products must be reported to the Commission under proposed new § 39.19(c)(4)(xxvi). If so, the Commission further requests comment regarding how the term should be defined.

23. Requested Reporting—§ 39.19(c)(5)

Regulation 39.19(c)(5)(i) through (iii) requires a DCO to provide to the Commission, upon request by the Commission, specific types of information. Paragraphs (c)(5)(i) through (iii) states that the information must be provided to the Commission “in the format and manner specified, and within the time provided, by the Commission in the request.” The Commission is proposing to amend § 39.19(c)(5)(i) through (iii) by deleting this language from each of the subparagraphs and adding introductory language to the paragraph that would require a DCO to provide the information specified in the paragraphs upon request by the Commission “and within the time specified in the request.” Regulation 39.19(b) already requires a DCO to provide the information in the format and manner specified by the Commission, so it is unnecessary to repeat that requirement in § 39.19(c)(5).

The Commission is proposing to remove current § 39.19(c)(5)(iii), which requires a DCO to report to the Commission upon request end of day gross positions by each beneficial owner. This provision is no longer necessary given the proposed amendment to § 39.19(c)(1)(i), which requires a DCO to report margin, cash flow, and position information by individual customer account.

I. Public Information—§ 39.21

Regulation 39.21 implements Core Principle L, which generally requires that a DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO. The Commission is proposing some minor changes to clarify the requirements of § 39.21.

1. Public Disclosure and Publication of Information—§ 39.21(c) and (d)

Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO’s rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO. Regulation 39.21(d) requires the DCO to post all of this information, as well as the DCO’s rulebook and a list of its current clearing members, on the DCO’s website, unless otherwise permitted by the Commission.

The Commission is proposing to remove § 39.21(d) and incorporate its requirements into § 39.21(c). The Commission believes that this will help clarify for DCOs what information must be made publicly available on their websites. The Commission has noted that some DCOs have made available certain items of information listed in current § 39.21(c) only by posting their rulebooks on their websites. The Commission wishes to clarify that a DCO must make each of the items of information listed in proposed § 39.21(c) available separately on the DCO’s website and not just in the DCO’s rulebook. This will assist members of the public in locating the relevant information and may facilitate greater uniformity across DCO websites.

2. Financial Resources—§ 39.21(c)(4)

Regulation 39.21(c)(4) requires a DCO to disclose publicly the size and composition of its financial resource package available in the event of a clearing member default. The Commission has received questions

concerning how often this information must be updated. Regulation 39.11(f)(1)(i)(A) requires a DCO to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission believes it is reasonable to expect a DCO to update this information publicly with the same frequency. Therefore, the Commission is proposing to amend § 39.21(c)(4) by adding the words “updated as of the end of the most recent fiscal quarter or upon Commission request and posted concurrently with submission of the report to the Commission under § 39.11(f)(1)(i)(A).”

3. Daily Settlement Prices, Volume, and Open Interest—§ 39.21(c)(5)

Regulation 39.21(c)(5) requires a DCO to disclose publicly daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO. Pursuant to current § 39.21(d), this information must be made available to the public on the DCO’s website no later than the business day following the day to which the information pertains.

The Commission has received questions from DCOs about the appropriate scope and time period for disclosure of daily settlement prices. With respect to scope, § 39.21(c)(5) clearly refers to daily settlement prices, volume, and open interest “for each contract, agreement, or transaction cleared or settled” by the DCO. The Commission therefore expects comprehensive disclosure of daily settlement prices, volume, and open interest for all contracts cleared or settled by the DCO, acting in its capacity as a DCO.⁵⁸ However, the Commission is aware that certain DCOs may not be posting all of the required information on their websites. The Commission notes that current § 39.21(d) requires posting of this information “unless otherwise permitted by the Commission.” Accordingly, any DCO that does not post all of the required information must seek relief from the Commission. In addition, although the plain language of § 39.21(c)(5) indicates that “daily” is intended to apply not only to settlement prices, but also to volume and open interest, the Commission hereby confirms that DCOs are expected to publicly disclose

⁵⁸ Regulation 39.21(c)(5) does not require a DCO to post information concerning contracts, agreements, or transactions it clears outside of its capacity as a DCO. For example, a DCO that is also registered with the SEC as a securities clearing agency would not have to post information concerning security-based swaps in order to comply with this provision.

volume and open interest, as well as settlement prices, on a daily basis in order to comply with § 39.21(c)(5).

Regulation 39.21(c)(5) does not specify a period of time the information must remain on the website. However, the Commission notes that certain DCOs make several days' worth of information available on their websites, and the Commission encourages others to do the same.

4. Swaps Required To Be Cleared—§ 39.21(c)(8)

Regulation 50.3(a) requires that a DCO make publicly available on its website a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the CEA and part 50 of the Commission's regulations. The Commission is proposing to adopt § 39.21(c)(8) to add a cross-reference to § 50.3(a).

J. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

The Dodd-Frank Act added three new core principles to the CEA relating to the governance of a DCO and the mitigation of potential conflicts of interest within a DCO. Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants. Core Principle P also requires a DCO to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any other party affiliated with any of the foregoing individuals or entities.

Core Principle P requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and establish a process for resolving such conflicts of interest. Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes market participants.

After the Dodd-Frank Act was enacted, the Commission proposed regulations that would have implemented Core Principles O, P, and Q.⁵⁹ Those regulations have not been

finalized, but the Commission did adopt other regulations that address some of the same issues that the proposed regulations would have addressed. For example, § 39.12(a)(1) requires a DCO to have participant eligibility criteria that permit fair and open access to the DCO; this addresses the concern that a DCO's existing clearing members might try to block potential members' access to the DCO for reasons that are not risk-based.⁶⁰

As previously noted, the Commission also adopted subpart C of part 39 of the Commission's regulations.⁶¹ Included in subpart C is § 39.32, which sets forth the requirements for governance arrangements for SIDCOs and subpart C DCOs. In promulgating § 39.32, the Commission noted that its requirements are consistent with Core Principles O, P, and Q.⁶²

The Commission is proposing to remove § 39.32 and adopt new §§ 39.24, 39.25, and 39.26, which would incorporate all of the requirements of § 39.32 and move them to subpart B, making them applicable to all DCOs, not just SIDCOs and subpart C DCOs. These governance requirements are designed to enhance risk management and controls by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. The Commission believes these standards are appropriate for all DCOs, as most DCOs already meet such standards in order to be considered a QCCP, and incorporate best practices within the clearing industry. The Commission notes, however, that while the language that is proposed to be adopted in these sections is essentially the same as that which is included in § 39.32, the provisions have been rearranged to correspond with the relevant core principle—§ 39.24 implements Core Principle O; § 39.25 implements Core Principle P; and § 39.26 implements Core Principle Q.

As noted above, Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes market participants. The Commission has become aware of issues in interpreting this requirement.

Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (Jan. 6, 2011). The Commission is withdrawing these proposals as they relate to DCOs.

⁶⁰ Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR at 63735–36.

⁶¹ See Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

⁶² See *id.* at 72485–86.

In order to avoid ambiguity and provide greater clarity, the Commission is proposing to clarify certain aspects of this requirement. First, Commission staff has received questions as to whether the term “governing” should be read to apply only to the term “board,” or if it should be read to apply to the term “committee” as well. Consistent with the title of Core Principle Q, “Composition of Governing Boards,” the Commission interprets this clause to refer to the governing body, whether a “board” or a “committee,” and does not interpret this clause to refer to the “governing board” or a “committee,” which could be any type of committee. Therefore, the Commission is proposing to require market participation on the DCO's governing board or board-level committee, *i.e.*, the group with the ultimate decision-making authority.

Second, the Commission is proposing to define “market participant” in part 39 to mean any clearing member of the DCO or customer of such clearing member, or an employee, officer, or director of such an entity. A DCO's clearing members and their customers have a unique perspective that complements that of the other decision makers on the governing board. Customers clearing trades through an FCM in a particular market are exposed to the risks of that market, just as clearing members are, and therefore have similar interests in the decisions that govern the operations of the DCO. In general, clearing members and their customers understand risk, have market experience and perspective, and have knowledge of clearing and the markets for which the DCO clears. The Commission notes that an employee, officer, or director of a market participant serving on a DCO's governing board or committee is not necessarily required to have voting power, as such participation may impose duties that are in conflict with the employee, officer, or director's duties to the market participant. However, a non-voting market participant must otherwise be enabled by the DCO to participate fully in board meetings in terms of receiving information, providing input, and representing market participant views.

K. Legal Risk—§ 39.27

Regulation 39.27(c) requires a DCO that provides clearing services outside the United States to identify and address conflict of law issues, specify a choice of law, be able to demonstrate the enforceability of its choice of law in relevant jurisdictions, and be able to demonstrate that its rules, procedures, and contracts are enforceable in all

⁵⁹ See Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (Oct. 18, 2010); Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional

relevant jurisdictions. In addition, Form DCO requires each applicant for DCO registration that provides or will provide clearing services outside the United States to provide a memorandum to the Commission that would, among other things, analyze the insolvency issues in the jurisdiction where the applicant is based.

The Commission is proposing to amend § 39.27(c) by adding paragraph (c)(3). Proposed § 39.27(c)(3) would require a DCO that provides clearing services outside the United States to ensure on an ongoing basis that the memorandum required in Exhibit R of Form DCO is accurate and up to date and to submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

L. Fully-Collateralized Positions

The Commission has oversight of a few registered DCOs that clear fully-collateralized positions. Fully-collateralized positions are designed to have on deposit a sufficient amount of funds, at all times, to cover the maximum potential loss that could be incurred in connection with a position. In the case of binary options, for example, the maximum risk is limited to the amount invested in the option. Because counterparties do not take a position in the underlying asset, movements in the underlying asset would not affect the payout received or loss incurred. Full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division has granted relief from certain provisions of part 39 to DCOs that clear fully-collateralized positions.⁶³ With this release, the Commission is proposing to codify this relief and to provide clarity to DCOs and future applicants for DCO registration regarding how the regulations in part 39 apply to DCOs that clear fully-collateralized positions.⁶⁴

Fully-collateralized positions do not expose DCOs to many of the risks that traditionally margined products do. Therefore, the Commission is proposing to amend certain part 39 regulations to better accommodate fully-collateralized positions, where full-collateralization addresses the risks that the regulations are meant to address.

The proposed amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully-collateralized positions, as well as the relief previously granted to DCOs that clear such positions. The Commission believes the proposed amendments would not negatively impact prudent risk management at any DCO, regardless of the types of products cleared.

1. Definition of “Fully-Collateralized Positions”—§ 39.2

The Commission is proposing to define a “fully-collateralized position” as a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a counterparty could incur upon liquidation or expiration of the contract.

2. Computation of Financial Resources Requirement—§ 39.11(c)(1)

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1)⁶⁵ requires a DCO to perform monthly stress testing in order to make a reasonable calculation of the financial resources it would need in the event of such a default. Division staff has expressed the view that a DCO can satisfy the requirements of § 39.11(a)(1) by clearing fully-collateralized positions.⁶⁶ For fully-collateralized positions, a DCO holds its maximum possible loss on each contract at all times and does not face the risk of a clearing member default. The monthly stress tests required by § 39.11(c)(1)(i) are therefore unnecessary for fully-collateralized positions. Accordingly, the Commission is proposing to amend § 39.11(c)(1)(i) to clarify that a DCO does

not have to perform monthly stress tests on fully-collateralized positions.

3. Liquidity of Financial Resources—§ 39.11(e)(1)(ii)

Regulation 39.11(e)(1)(ii) requires a DCO to have enough financial resources to meet the requirements of § 39.11(a)(1) that are sufficiently liquid to enable the DCO to fulfill its obligations during a one-day settlement cycle. The specific amount of liquid resources a DCO must hold is based on the historical settlement pays of its clearing members. A DCO maintains sufficient liquidity for fully-collateralized positions by requiring clearing members to post the full potential loss of a position in the form of the potential obligation. Requiring collateral to be in the form of the potential obligation eliminates the risk that the DCO will not have sufficient liquidity to meet its obligations and the need for daily mark-to-market settlements. Further, if a DCO were to complete the calculation required by § 39.11(e)(1)(ii), the amount would not change from day to day as the DCO operates a fully-collateralized model. As a result, the calculation required in § 39.11(e)(1)(ii) is neither necessary or applicable for fully-collateralized positions. The Commission is therefore proposing to amend § 39.11(e)(1)(iv) to clarify that DCOs do not need to include fully-collateralized positions in the calculation required thereunder.

4. Periodic Reporting of Participant Eligibility—§ 39.12(a)(5)(i) and (a)(5)(i)(B)

Regulation 39.12(a)(5)(i) requires a DCO to require its clearing members to provide the DCO with periodic financial reports that allow the DCO to assess whether participation requirements are being met on an ongoing basis. Regulation 39.12(a)(5)(i)(B)⁶⁷ requires a DCO to make these reports available to the Commission at the Commission's request.⁶⁸ The Commission's participant eligibility requirements in § 39.12(a) are intended to ensure that DCO participants maintain sufficient financial resources and operational capacity to meet the obligations arising from clearing at a DCO.⁶⁹ Clearing members that only clear fully-collateralized positions present no

⁶³ See CFTC Letter No. 14–04 (January 16, 2014) (granting exemptive relief to the North American Derivatives Exchange, Inc. (Nadex)); CFTC Letter No. 17–35 (July 24, 2017) (granting exemptive relief to LedgerX).

⁶⁴ The Division also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14–05 (January 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this proposed rulemaking.

⁶⁵ Revisions contained elsewhere in this proposed rulemaking would renumber this paragraph as § 39.11(c)(1)(i).

⁶⁶ See CFTC Letter No. 14–05 (January 16, 2014) (providing interpretive guidance to Nadex).

⁶⁷ Revisions contained elsewhere in this proposed rulemaking would renumber § 39.12(a)(5)(i)(B) as § 39.12(a)(5)(iii).

⁶⁸ Regulation 39.12(a)(5)(i)(B) allows DCOs to either require clearing members to make the reports available to the Commission or to provide the reports to the Commission directly.

⁶⁹ See Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69352.

credit or default risk to the DCO because their full potential loss is already held by the DCO. Thus, periodic financial reports from non-FCM clearing members that only clear fully-collateralized positions do not provide any risk management benefit to DCOs. The Commission therefore is proposing to add new § 39.12(a)(5)(v) to exclude non-FCM clearing members that only clear fully-collateralized positions from the financial reporting requirements in § 39.12(a)(5)(i) and (a)(5)(i)(B).

5. Large Trader Stress Tests—§ 39.13(h)(3)

Regulation 39.13(h)(3) requires a DCO to conduct stress testing on a daily basis with respect to each large trader who poses significant risk to a clearing member or the DCO, and at least on a weekly basis with respect to each clearing member account, by house origin and by each customer origin. As discussed above, DCOs hold, at all times, the full potential loss of fully-collateralized positions cleared by the DCO, and a DCO does not face the risk of default from accounts that only hold fully-collateralized positions. As a result, such stress tests would not provide DCOs new information on accounts that only clear fully-collateralized positions. The Commission is therefore proposing to add new § 39.13(h)(3)(iii) to exclude clearing member accounts that hold only fully-collateralized positions from the stress testing requirements in § 39.13(h)(3)(i) and (ii).

6. Daily Reporting—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to submit to the Commission a daily report containing information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. Because fully-collateralized positions do not pose a credit risk to the DCO or other participants, the Commission does not need daily reporting of this information with respect to fully-collateralized positions. Therefore, the Commission is proposing to amend § 39.19(c)(1)(i) such that the enumerated daily reporting is not required with respect to fully-collateralized positions.

V. Amendments to Part 39—Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions

A. Financial Resources for SIDCOs and Subpart C DCOs—§ 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple

jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is proposing to amend § 39.33(a)(1) by replacing the phrase “largest combined loss” with “largest combined financial exposure” in order to achieve consistency with the relevant provisions of Commission regulations and the CEA—specifically, § 39.11(a)(1) and section 5b(c)(2)(B) of the CEA regarding DCO financial resources requirements.

Regulation 39.33(c)(1) requires a SIDCO or subpart C DCO to maintain eligible liquid resources sufficient to meet its obligations to perform settlements with a high degree of confidence under a wide range of stress scenarios that should include the default of the clearing member creating the largest aggregate liquidity obligation for the SIDCO or subpart C DCO. The Commission is proposing to amend § 39.33(c)(1) by adding the phrase “in all relevant currencies” to clarify that the “largest aggregate liquidity obligation” means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO during the time it would take to liquidate or auction the defaulted clearing member’s positions, as reasonably modeled by the DCO. When evaluating its largest aggregate liquidity obligation on a day-to-day basis over a multi-day period, a SIDCO or subpart C DCO may use its liquidity risk management model.

Regulation 39.33(d) requires a SIDCO or a subpart C DCO to undertake due diligence to confirm that each of its liquidity providers has the capacity to perform its commitments to provide liquidity, and to regularly test its own procedures for accessing its liquidity resources. The Commission is proposing to additionally require a SIDCO with access to deposit accounts and related services at a Federal Reserve Bank to use such services where practical. This requirement would further enhance a SIDCO’s financial integrity and management of liquidity risk.⁷⁰

⁷⁰ Under section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), the Board of Governors of the Federal Reserve System may authorize a Federal Reserve Bank to establish and maintain an account for a financial market utility (FMU), which includes a SIDCO. A SIDCO with access to accounts and services at a Federal Reserve Bank is required to comply with related rules published by the Board of Governors of the Federal Reserve System. See

B. Risk Management for SIDCOs and Subpart C DCOs—§ 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is proposing to amend § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission is also proposing to amend § 39.36(b)(2)(ii) to replace the words “produce accurate results” with “react appropriately” to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. The Commission is also proposing to amend § 39.36(d), which requires each SIDCO and subpart C DCO to “regularly” conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted “on at least an annual basis (or more frequently if there are material relevant market developments).”

The Commission is also proposing to amend § 39.36(e) by adding the heading “[i]ndependent validation” to the provision.

C. Additional Disclosure for SIDCOs and Subpart C DCOs—§ 39.37

Regulation 39.37(a) and (b) requires a SIDCO or a subpart C DCO to publicly disclose its responses to the CPMI–IOSCO Disclosure Framework⁷¹ and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO’s or subpart C DCO’s system or environment in which it operates. The Commission is proposing to amend § 39.37(b) to additionally require that a SIDCO or a subpart C DCO provide notice to the Commission of any such updates to its responses following material changes to its system or environment no later than ten business days after the updates are made. Further, such notice would have

generally Financial Market Utilities, 78 FR 76973 (Dec. 20, 2013) (final rules adopted by the Board of Governors to govern accounts held by designated FMUs).

⁷¹ See CPMI–IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf>.

to be accompanied by a copy of the text of the responses, specifying the changes that were made to the latest version of the responses. Providing this notice would ensure that the Commission has access to the most current information available and would enable the Commission to identify changes since the last update to the disclosure responses.

Regulation 39.37(c) requires a SIDCO or a subpart C DCO to disclose, to the public and to the Commission, relevant basic data on transaction volume and values. In adopting this provision, the Commission noted that this requirement was intended to be consistent with the then-forthcoming quantitative disclosure standards being developed by CPMI-IOSCO.⁷² On February 26, 2015, CPMI-IOSCO published the Public Quantitative Disclosure Standards for Central Counterparties.⁷³ The Commission is proposing to amend § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI-IOSCO Public Quantitative Disclosure Standards for Central Counterparties.

D. Corrections to Subpart C Regulations

The Commission is proposing to amend § 39.39(a)(2) to change the word “or” to “of.”

VI. Amendments to Appendix A to Part 39—Form DCO

To request registration as a DCO, § 39.3(a)(2) requires an applicant to file a complete Form DCO, which includes a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to part 39. The Commission uses Form DCO, which is comprised of a series of different exhibits that require the applicant to provide details of its operations, to determine whether the applicant demonstrates compliance with the Act and applicable Commission regulations. Applicants must also use Form DCO to amend a pending application or request an amended order of registration.

The Commission is proposing to amend Form DCO to better describe the required exhibits in a manner that is consistent with the proposed amendments to the relevant regulations as described herein. For example, the Commission proposes to amend Exhibit

A–11 to incorporate the more flexible CCO reporting structure that the Commission is proposing in § 39.10(c)(1)(ii); add proposed Exhibit A–12 to describe a DCO’s enterprise risk management program as consistent with newly proposed § 39.10(d); amend Exhibit B–1 to incorporate proposed amendments to the Commission’s financial resources requirements in proposed § 39.11; and amend Exhibits O, P and Q to reflect the Commission’s proposed amendments to §§ 39.24, 39.25, and 39.26 which would incorporate the specific governance arrangement, conflict of interest, and board composition requirement, which are currently only detailed in § 39.32 for SIDCOs and subpart C DCOs.

The Commission is also proposing to amend Form DCO to update the form to reflect the Commission’s other rulemaking efforts. For example, the Commission proposes to amend Exhibit A–6 to update the reference from public director to independent director to remove terminology that was proposed but not ultimately adopted by the Commission for certain governance requirements, and amend Exhibit F–2 to include cross-references to Commission regulations in part 22 which was adopted after the Commission adopted part 39.

The Commission also proposes to amend Form DCO to eliminate information that has proven to be unnecessary to determine an applicant’s compliance with the Act and applicable Commission regulations. For example, the Commission proposes to eliminate the requirement within Exhibit A–6 that an applicant provide contact information for each officer, director, governor, general partners, LLC managers, and all standing committee members. Lastly, the Commission also proposes to remove references within the Form DCO instructions to use the form to request an amended order of registration. The Commission intends for these proposed Form DCO changes to establish a clearer application process for applicants that also provides the Commission with improved information to determine compliance with the Act and Commission regulations.

VII. Amendments to Appendix B to Part 39—Subpart C Election Form

The Commission is proposing to amend the subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided

by a DCO as part of its petition for subpart C election.

Currently, unlike Form DCO, the subpart C Election Form references the corresponding regulations in subpart C, but does not specify the type or level of information that must be filed as an exhibit. In order to more closely align the format of the subpart C Election Form with Form DCO, the Commission is proposing to amend the subpart C Election Form to reflect the requirements of subpart C.

VIII. Amendments to Part 140—Organization, Functions, and Procedures of the Commission

Regulation 140.94 includes delegation of authority from the Commission to the Director of the Division of Clearing and Risk. The Commission is proposing to revise § 140.94 to conform to the changes to part 39 it is proposing in this release.

IX. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies 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 on the impact.⁷⁴ The regulations proposed by the Commission will affect only DCOs. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.⁷⁵ The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.⁷⁶ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)⁷⁷ provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This proposed rulemaking contains reporting and recordkeeping requirements that are collections of information within the meaning of the PRA. If adopted,

⁷² Derivatives Clearing Organizations and International Standards, 78 FR at 72493.

⁷³ See CPMI-IOSCO, Public Quantitative Disclosure Standards for Central Counterparties (Feb. 2015), available at <https://www.bis.org/cpmi/publ/d125.pdf>.

⁷⁴ 5 U.S.C. 601 *et seq.*

⁷⁵ 47 FR 18618 (Apr. 30, 1982).

⁷⁶ See 66 FR 45604, 45609 (Aug. 29, 2001).

⁷⁷ 44 U.S.C. 3501 *et seq.*

responses to the collections of information would be required to obtain a benefit. This section addresses the impact that the proposal will have on existing information collection requirements associated with part 39.

Additionally, the Commission is consolidating four collections of information relating to requirements under part 39.⁷⁸ The requirements covered by all four existing collections will be combined in OMB control number 3038–0076, which will be renamed as “Requirements for Derivatives Clearing Organizations,” and OMB control numbers 3038–0066, 3038–0069, and 3038–0081 will be cancelled. Changes to the existing information collection requirements as a result of this proposal are set forth below.

1. Subpart A—General Requirements Applicable to DCOs

Subpart A establishes the procedures and information required for applications for registration as a DCO, including submission of a completed Form DCO accompanied by all applicable exhibits. Form DCO is covered by OMB control number 3038–0076. Currently, collection 3038–0076 reflects that there are 3 applicants for DCO registration annually and that it takes 400 hours to complete and submit the form, including all exhibits. The Commission is reducing the number of potential applicants for DCO registration to two annually, based on recent numbers of applications filed. The Commission is proposing to modify and update Form DCO to conform it to the proposed revisions to part 39.

Additionally, the Commission is proposing to apply certain governance requirements applicable to SIDCOs and subpart C DCOs to all DCOs. This necessitates moving the corresponding burden hours from the subpart C Election Form to Form DCO. Specifically, 22 burden hours per respondent for the subpart C Election Form—Exhibits A through G, currently under OMB control number 3038–0081, would transfer to the Form DCO burden per respondent in OMB control number 3038–0076.

The proposal would eliminate the requirement for DCOs to use Form DCO to request an amended order of DCO

registration. The Commission estimates the burden hours per respondent would decrease by one hour due to the proposed change to § 39.3(a)(2) that would no longer require a DCO seeking to amend its order of registration to submit Form DCO. The new aggregate proposed estimate for Form DCO is as follows:

Form DCO—§ 39.3(a)(2)

Estimated number of respondents: 2.

Estimated number of reports per respondent: 1.

Average number of hours per report: 421.

Estimated gross annual reporting burden: 842.

The Commission also is proposing to amend certain existing provisions of § 39.3 regarding requests for extension of the review of a DCO application, vacation of a DCO’s registration, and transfer of positions. The Commission is proposing to adopt new § 39.3(a)(6), which would permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. Although this is not a new practice, it was not previously accounted for separately in this information collection. The Commission is estimating that there would be two requests for extension of the DCO application per year, one per respondent, and that it will take one hour per report. The new aggregate proposed estimate for the agreement in writing to extend the application review period pursuant to § 39.3(a)(6) is as follows:

Estimated number of respondents: 2.

Estimated number of reports per respondent: 1.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 2.

The Commission is proposing to amend § 39.3(e) to codify statutory requirements regarding vacation of registration. The proposed changes would specify information that a DCO must include in its request to vacate, and require a DCO to continue to maintain its books and records after its registration has been vacated for the requisite statutory and regulatory retention periods. The Commission estimates that there would be one request to vacate every three years and that it would take three hours per report. The annual aggregate burden for the request to vacate requirement has been divided to reflect the estimate of one request to vacate a DCO registration

pursuant to § 39.3(e)(1) every three years as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.33.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 1.

For recordkeeping by a DCO that has requested to vacate its registration, the Commission is adding this recordkeeping burden to OMB control number 3038–0076, which currently includes 16 responses and 50 burden hours for the recordkeeping requirement of registered DCOs. The Commission is also transferring the 100 recordkeeping burden hours currently contained in OMB control number 3038–0069 to OMB control number 3038–0076. The burden for the request to vacate requirement has been divided to reflect the estimate of one record of the request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years. The combined annual aggregate recordkeeping burden estimate for subparts A and B of part 39 under OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 150.

Estimated number of respondents-request to vacate: 1.

Estimated number of reports per respondent-request to vacate: 0.33.

Average number of hours per report-request to vacate: 1.

Estimated gross annual recordkeeping burden: 2,401.⁷⁹

The Commission is proposing changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes two hours per response. The Commission is of the view that to the extent that the transfer of open interest request would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed change is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

⁷⁸ The four collections are: OMB Control No. 3038–0066, Financial Resources Requirements for Derivatives Clearing Organizations; OMB Control No. 3038–0081, General Regulations and Derivatives Clearing Organizations; OMB Control No. 3038–0069, Information Management Requirements for Derivatives Clearing Organizations; and OMB Control No. 3038–0076, Risk Management Requirements for Derivatives Clearing Organizations.

⁷⁹ The total annual recordkeeping burden estimate reflects the combined figures for 16 registered DCOs with an annual burden of one response and 150 hours per response (16 × 1 × 150 = 2,400), and one vacated DCO registration every three years with an annual burden of one hour.

2. Subpart B—Requirements for Compliance With Core Principles

a. CCO Annual Reporting Requirements—§ 39.10(c)

Currently, § 39.10(c)(3) requires the CCO of a DCO to prepare, and to submit to the Commission and the DCO's board of directors, an annual compliance report containing specified information regarding the DCO's compliance with the core principles and Commission regulations. The burden for CCO annual reports, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. OMB control number 3038–0081 reflects that there are 12 respondents that submit CCO annual reports annually and that it takes 80 hours to complete and submit the report, and 960 hours in the aggregate. The number of respondents is being updated to 16 to reflect the current number of registered DCOs. The Commission is proposing to allow a DCO to incorporate by reference certain sections of prior annual compliance reports. Specifically, if the sections of the CCO annual report that describe the DCO's compliance policies and procedures have not materially changed, the current report may reference a prior year's report, provided that the referenced report was filed within the prior five years. The Commission estimates that this change should decrease the burden of preparing the CCO annual report by ten hours per respondent, and 160 hours in aggregate, by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been adequately described in a CCO annual report previously submitted to the Commission.

The Commission is proposing to specify that the CCO annual report must identify, by name, rule number, or other identifier, the policies and procedures intended to comply with each core principle and applicable regulation. The Commission estimates the proposed change would add two hours to the burden of preparing each report, and 32 hours in the aggregate. Lastly, the Commission is proposing to amend § 39.10(c)(4) to require that the CCO annual report describe the process by which the report is submitted to the DCO's board or senior officer. This requirement would require DCOs to memorialize in the report a process they are already required to follow. Nonetheless, the Commission anticipates an increase of one hour in the burden for each report, and 16 hours in the aggregate due to this proposed change. Overall, the Commission

estimates that the net impact of these increases and reductions to the CCO annual report burden due to the proposed changes is expected to be a decrease of seven hours per respondent in the existing information collection burden associated with the CCO annual report.⁸⁰ The aggregate proposed estimate for the CCO annual report is as follows:

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.

Average number of hours per report: 73.

Estimated gross annual reporting burden: 1,168.

b. Cross-Margining Programs

The Commission is proposing to add § 39.13(i), which would set forth the procedure for DCOs to submit information related to their proposed cross-margining programs with other DCOs (or other clearing organizations). Proposed § 39.13(i) would specify the information that a DCO would need to provide to the Commission regarding its cross-margining program and require that the DCO submit this information as part of a rule filing submitted for Commission approval pursuant to § 40.5. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes 2 hours per response. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed changes is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

c. Financial Resources Reporting

i. Annual Financial Reports

Existing § 39.11(f) requires DCOs to provide to the Commission quarterly reports of their financial resources, and § 39.19(c)(3) requires DCOs to prepare and submit audited annual financial statements. The Commission is proposing to add § 39.11(f)(2), which would incorporate in § 39.11 the annual reporting requirement that currently

⁸⁰ The existing burden estimate for the CCO annual report is 80 hours per response. For the new estimate, the Commission is subtracting ten hours for the proposal not to require restatement of information that has not changed from the prior report, adding two hours for the proposal to require references to rules and policies, and one hour for the proposal to require that the report include documentation of the process of providing the report to the board, for a net burden per respondent of 73 hours. The recordkeeping burden is covered by OMB Control No. 3038–0076 and it is not affected by the proposal.

exists in § 39.19(c)(3). This change simply moves the existing requirement to a different location, and does not alter the existing information collection burden associated with this requirement. Accordingly, the burden for annual financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076, and the burden for quarterly financial reports is being moved from OMB control number 3038–0066 to OMB control number 3038–0076. The Commission is cancelling OMB control numbers 3038–0069 and 3038–0066.

The Commission also is proposing to require in § 39.11(f)(2) that, concurrently with filing the required annual financial report, a DCO also provide: (1) A reconciliation, including appropriate explanations, of its balance sheet in the certified annual financial statements with the DCO's most recent quarterly report when material differences exist or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the required statements not misleading. The Commission estimates that the proposed change would add an additional 20 hours per report, and 320 hours in the aggregate, to the current burden of 2,606 hours per respondent, and 41,696 hours, in OMB control number 3038–0069, which as noted above, is being moved to OMB control number 3038–0076.

Finally, the Commission is proposing in § 39.11(f)(2)(i) that the annual report be required to identify the DCO's own capital allocated to the DCO's compliance with § 39.11(a)(1), and also identify each of the DCO's financial resources allocated to the DCO's compliance with § 39.11(a)(2). The Commission estimates that the proposed change would add an additional 14 hours per report and 224 hours in the aggregate to the current burden of 2,606 hours per respondent, and 41,696 hours, in OMB control number 3038–0069, which as noted above, is being moved to OMB control number 3038–0076.

The Commission estimates that the aggregate result of these changes will be to increase the information collection burden associated with annual financial reports from 2,606 hours to 2,640 hours for each DCO. The revised estimated aggregate burden for the audited annual financial statements is as follows:

Estimated number of respondents: 16.
Estimated number of reports per respondent: 1.

Average number of hours per report: 2,640.

Estimated gross annual reporting burden: 42,240.

ii. Quarterly Financial Reports

The Commission is proposing to remove from § 39.11(f)(3) the requirement that certain documentation be filed quarterly; instead, DCOs would only need to include the information in their first quarterly report submission and upon any subsequent change, for an expected reduction of three hours per report. Proposed § 39.11(f)(1)(v) would require a DCO to identify in its quarterly report the financial resources allocated to meeting its obligations under § 39.11(a)(1) and (2), with an expected increase of one hour per report. The Commission has adjusted the existing burden hours for quarterly reporting to reflect these proposed changes, which result in an overall reduction in burden of two hours per report from the total estimated burden reflected in OMB control number 3038–0066. The estimated aggregate burden for the quarterly reports, as amended by the proposal is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 4.

Average number of hours per report: 8.

Estimated gross annual reporting burden: 512.

The Commission is also proposing to amend § 39.11(f)(1)(ii), which requires a DCO to file with the Commission a financial statement of the DCO or of its parent company. The Commission is proposing to amend § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company. The Commission is further proposing to amend the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. These changes are not expected to affect the burden.

d. Daily Reporting

The Commission is proposing to amend § 39.19(c)(1)(i)(A)–(C), which requires a DCO to report margin, cash flow, and position information by house origin and separately by customer origin, to report this information by individual customer account as well. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report both unadjusted and risk-adjusted position information. The burden associated

with these proposed changes is anticipated to result in an increase from 0.1 to 0.5 hours per report, and 2,000 in the aggregate. The burden increase for daily financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076.

Separately, the Commission is proposing changes to § 39.19(c)(1)(i) that would codify relief previously granted to fully-collateralized DCOs that would reduce their daily reporting burden by not requiring information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. The proposed change would reduce the burden for fully-collateralized DCOs, but would not affect the burden for the majority of DCOs that are subject to daily reporting requirements. The revised aggregate burden estimate for daily reporting being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 2,000.

The Commission is proposing amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This is a new information collection that is not covered by an existing OMB control number. The burden applicable to clearing members is estimated as follows:

Estimated number of respondents: 64.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.2.

Estimated gross annual reporting burden: 3,200.

e. Event-Specific Reporting

Regulations 39.18(g) and (h) require a DCO to provide notice regarding certain exceptional events or planned changes related to a DCO's automated systems. These notice requirements are incorporated by reference in § 39.19(c)(4). Regulation 39.19(c)(4) also requires a DCO to notify the Commission of the occurrence of other specified events; for example, a decrease in financial resources or the default of a clearing member. The information collection burden associated with these notices required under § 39.19(c)(4) is currently addressed by OMB Control No. 3038–0069, but is being moved to OMB control number 3038–0076 and consolidated with the burden in OMB

control number 3038–0076 that is currently associated with § 39.18(g) and (h). In addition, the Commission is proposing to add to § 39.19(c)(4) several events for which DCOs will be required to provide notification if such events occur.

The Commission is also proposing to amend § 39.16(c)(2)(ii) to require that a DCO provide immediate public notice of a declaration of default on its website. The estimated burden of proposed § 39.16(c)(2)(ii) is included in the estimate for event-specific reporting because it would occur concurrently with the requirement under § 39.19(c)(4)(vii) that a DCO provide immediate notice to the Commission regarding the default of a clearing member.

The burden associated with these proposed changes pursuant to § 39.19(c)(4) is anticipated to result in an increase in the number of reports by DCO per year on average, from four to 20, and a reduction in the hour burden per response, which was previously overstated, from six to 0.5 hours, because a DCO is required to provide a brief notice with only the pertinent details of the incident. The aggregate revised burden estimate of § 39.19(c)(4) being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 20.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 160.

f. Public Information

The Commission is proposing to revise § 39.21 to clarify that information regarding the financial resource package available in the event of a clearing member default, which a DCO is required to post on its website pursuant to § 39.21, should be updated at least quarterly, consistent with the requirement in § 39.11(f)(1)(i)(A) to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission is also clarifying that other information specified in § 39.21 must be disclosed separately on the DCO's website, and not provided solely in the DCO's posted rulebook. This is a new information collection that is not covered by an existing OMB control number. The proposed changes are estimated to add an average of two hours per response, and eight hours per respondent annually (4 quarterly reports × 2 hours per report) to OMB control number 3038–0076, for an aggregate estimated burden as follows:

Estimated number of respondents: 16.
Estimated number of reports per respondent: 4.
Average number of hours per report: 2.
Estimated gross annual reporting burden: 128.

g. Governance

As noted above, the Commission is proposing to incorporate governance provisions from subpart C, which only applies to a limited subset of DCOs, into subpart B, which is applicable to all DCOs. Therefore, the information collection burden currently associated with the governance standards of § 39.32, which results from required disclosure of major board decisions and governance arrangements, has been reallocated to § 39.24. The burden associated with subpart C governance provisions, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. The aggregate burden of these requirements would increase because they will be applicable to all registered DCOs. The new aggregate burden estimate for proposed § 39.24 that is associated with the required ongoing disclosure of major board decisions and governance arrangements by registered DCOs, including DCOs that are not currently subject to subpart C, is estimated as follows:

Estimated number of respondents: 16.
Estimated number of reports per respondent: 6.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 288.

h. Legal Risk

Proposed changes to § 39.27 would require a DCO that provides clearing services outside the United States to ensure that the legal opinion that a DCO must obtain to provide those services is accurate and up to date. The new subsection also requires the DCO to submit an updated legal memorandum to the Commission following all material changes to the analysis or content contained in the memorandum. This requirement would apply only to DCOs offering clearing services outside the U.S. This is a new information collection that is not covered by an existing OMB control number. The Commission expects that circumstances necessitating submission of an updated legal memorandum will occur infrequently, not more than once every three years, and has estimated the aggregate burden as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.33.
Average number of hours per report: 20.

Estimated gross annual reporting burden: 6.6.

3. Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions of Subpart C
 Because the Commission is proposing to remove and reserve § 39.32 and Exhibit B of the subpart C Election Form and to move the governance requirements to Form DCO and § 39.24, the corresponding information collection burden under § 39.32, currently covered by OMB control number 3038–0081 would be eliminated and the burden under the subpart C Election Form would be reduced. Further, in consolidating the burden for subpart C, currently in OMB control number 3038–0081, with OMB control number 3038–0076, the Commission has reassessed the burden for the subpart C Election Form, and is adjusting certain burden hour estimates and numbers of respondents. Specifically, the Commission is reducing the number of burden hours estimated for the certification portion of the subpart C Election Form from 25 hours to 2 hours, because the prior estimate overstated the burden necessary to prepare the one-page certification. The burden that is currently estimated separately for the certifications, exhibits, and supplements/amendments to the subpart C Election Form have been combined because a DCO must provide all the required information in order to submit a complete subpart C Election Form.⁸¹

Additionally, the Commission is proposing to update the estimated numbers of respondents for subpart C to reflect the current number of SIDCOs and subpart C DCOs, and a reduction, from five to one, in the anticipated number of DCOs newly electing to be subject to subpart C. The Commission is also updating the number of responses for the rescission notices that must be provided to clearing members based on an average of the current number of clearing members at subpart C DCOs. The Commission also is combining

⁸¹ The current burden for the subpart C Election Form exhibits is 155 hours per response; 22 of these hours are being moved to the Form DCO burden as discussed in the Form DCO section above, leaving 133 hours. Also, the Commission is reducing the burden currently attributed to amendments to the subpart C Election Form and consolidating it with the burden for supplemental information because in practice, DCOs have not frequently filed amendments. Consolidating the certification (2 hours), exhibits (133 hours), and supplemental or amended information (45 hours) results in a burden of 180 hours.

burden estimates that previously were estimated separately for SIDCOs only and for all subpart C DCOs; that distinction was made in the initial implementation of subpart C but is no longer necessary since the subpart C rules have been in place for several years. The revised estimated aggregate reporting burden related to the subpart C Election Form, notices and disclosure being transferred to OMB control number 3038–0076 is as follows:

Subpart C Election Form

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 180.
Estimated gross annual reporting burden: 180.

Subpart C Withdrawal Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 2.
Estimated gross annual reporting burden: 2.

Subpart C Rescission Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 16.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 48.

PFMI Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 200.
Estimated gross annual reporting burden: 200.

Quantitative Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 80.
Estimated gross annual reporting burden: 80.

Additionally, the Commission is proposing to add to § 39.37 a notification requirement regarding changes to the PFMI disclosure framework for SIDCOs and subpart C DCOs, which is expected to increase, by one hour, the existing information collection burden of 80 hours per response. The aggregate estimated burden for § 39.37 is stated below:

Subpart C Disclosure Framework Requirements—§ 39.37

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 81.

Estimated gross annual reporting burden: 729.

Because the Commission is moving all of the burden estimates for subpart C from OMB control number 3038–0081 to OMB control number 3038–0076 and cancelling information collection 3038–0081, the existing burden estimates for §§ 39.33, 39.36, 39.38, and 39.39, and certain disclosures under § 39.37, as updated to reflect the current number of SIDCOs and subpart C DCOs, are restated below. In addition, for the quantitative disclosures required under § 39.37, which may be updated as frequently as quarterly, the Commission has updated the number of reports per respondent from one to four annually, and has distributed the existing 35 burden hours among the four reports ($35/4 = 8.75$, rounded to 9). The updated subpart C reporting burden estimates for the changes to subpart C—Provisions is as follows:

Subpart C Financial and Liquidity Resource Documentation—§ 39.33

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 120.

Estimated gross annual reporting burden: 1080.

Subpart C Stress Test Results—§ 39.36

Estimated number of respondents: 9.

Estimated number of reports per respondent: 16.

Average number of hours per report: 14.

Estimated gross annual reporting burden: 2016.

Subpart C Quantitative Disclosures—§ 39.37

Estimated number of respondents: 9.

Estimated number of reports per respondent: 4.

Average number of hours per report: 9.

Estimated gross annual reporting burden: 324.

Subpart C Transaction, Segregation and Portability Disclosures—§ 39.37

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 35.

Estimated gross annual reporting burden: 315.

Subpart C Efficiency and Effectiveness Review—§ 39.38

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 3.

Estimated gross annual reporting burden: 27.

Subpart C Recovery and Wind-down Plan—§ 39.39

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 480.

Estimated gross annual reporting burden: 4,320.

With respect to the subpart C recordkeeping burden that the Commission is moving from OMB control number 3038–0081 to OMB control number 3038–0076, the Commission also has combined the burden estimates for financial and liquidity resources, and liquidity resource due diligence and testing because these requirements apply to the same set of respondents. As noted above, the general recordkeeping requirements that were previously estimated separately for SIDCOs and all subpart C DCOs also have been combined. The updated subpart C recordkeeping burden estimates are restated below:

Subpart C Recordkeeping—General

Estimated number of respondents: 9.

Estimated number of reports per respondent: 110.

Average number of hours per report: 10.

Estimated gross annual recordkeeping burden: 9,900.

Subpart C Recordkeeping—Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing

Estimated number of respondents: 9.

Estimated number of reports per respondent: 8.

Average number of hours per report: 10.

Estimated gross annual recordkeeping burden: 720.

Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating 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;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, e.g., permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160 or from <http://RegInfo.gov>. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- OIRAsubmissions@omb.eop.gov (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

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.⁸² Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following 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 Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors (collectively referred to herein as section 15(a) factors). The Commission has not identified any impact that the proposed changes to part 39 would have on price discovery. The impact the proposed changes to part 39 would have on the other section 15(a) factors is considered below.

The Commission recognizes that the proposed rules may impose costs. The Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the proposed rules. Additionally, the initial and recurring compliance costs for any particular DCO will depend on the size, existing infrastructure, level of clearing activity, practices, and cost structure of the DCO.

The Commission notes that this consideration is based on its understanding that centralized clearing activity functions internationally with (i) clearing activity that involves U.S. firms occurring across different international jurisdictions; (ii) some entities organized outside the U.S. that are prospective or current Commission registrants; and (iii) some entities typically operating both within and outside of the U.S. who follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, its discussion of costs and benefits refers to the effects of the proposed rules on all activity subject to it, 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 section 2(i) of the CEA. In particular, the Commission notes that some DCOs

subject to the proposed rules are located outside of the United States.

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; the potential costs and benefits of the alternatives discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed rules; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing DCOs that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking are: (1) The DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the general provisions applicable to DCOs under subparts A and B of part 39 of the Commission's regulations; (3) the Commission's regulations in subpart C of part 39, which establish additional standards for compliance with the core principles for those DCOs that are designated as SIDCOs or have elected to opt-in to the subpart C requirements in order to achieve status as a QCCP; (4) Form DCO in appendix A to part 39; (5) subpart C Election Form in appendix B to part 39; and (6) §§ 1.20(d) and 140.94.

The Commission notes that some of the proposed rules would codify existing no-action relief and other guidance issued by Commission staff. To the extent that market participants have relied upon such relief or staff guidance, the actual costs and benefits of the proposed rules, as discussed in this section of the proposal, may not be as significant.

3. Written Acknowledgment From Depositories—§ 1.20

a. Benefits

Regulation 1.20(d)(1) requires an FCM to obtain a written acknowledgment from each depository with which the FCM deposits futures customer funds. The regulation provides that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules providing for the segregation of customer funds, but other

provisions of § 1.20(d) seem to suggest that a DCO must provide the written acknowledgment regardless. The Commission is proposing to amend § 1.20(d) to clarify the Commission's intent that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes this will benefit FCMs and DCOs by reducing uncertainty as to when an FCM must obtain a written acknowledgment from a DCO.

b. Costs

The Commission does not believe the proposed amendment would impose any additional costs on DCOs or FCMs, as it is clarifying the circumstances under which an acknowledgment letter would not be required.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the proposed amendments to § 1.20(d) would not negatively impact the protection of market participants and the public, including DCOs' clearing members and their customers, as the proposed amendment merely clarifies the instances in which a DCO, or an FCM that clears through that DCO, would not need to file an acknowledgment letter because the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes that the proposed amendment to § 1.20(d) will result in an incremental increase in efficiency for FCMs that follows from reducing any previous uncertainty regarding when they must obtain an acknowledgment letter. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendment.

4. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. The Commission is proposing amendments to the definition of "business day," "customer," "customer account or customer origin," and "key personnel" in § 39.2 to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms. The Commission is also adding new definitions for "enterprise risk

⁸² 7 U.S.C. 19(a).

management” and “fully-collateralized position” to correspond with amendments that the Commission is proposing elsewhere in part 39.

a. Benefits

The Commission believes the proposed amendments to § 39.2 would benefit DCOs by clarifying existing part 39 requirements, such as what constitutes a Federal holiday for purposes of applying the definition of “business day.” The Commission believes the newly proposed definitions in § 39.2 for “enterprise risk management” and “fully-collateralized positions” are necessary to understanding the proposed rules for an enterprise risk management framework in proposed § 39.10(d) and proposed exceptions from several requirements for fully-collateralized positions throughout part 39. The proposed amendments to the definitions of “customer” and “customer account or customer origin” would also help to avoid conflicts with similar terms defined in § 1.3.

b. Costs

The Commission does not believe the proposed new and amended definitions would impose additional costs on DCOs, as they are not imposing additional requirements, but rather defining terms that are used in other provisions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that DCOs may experience a modest increase in efficiency as a result of the proposed amendments. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the amended definitions provide clarity, reduce any previous uncertainty, or help to avoid conflicts with similar terms that are defined in different sections, these effects, individually and in aggregate, may yield increased efficiency. For example, the Commission believes the proposed amendments to the definition of “business day” in § 39.2 will better enable DCOs, particularly those located outside of the United States, to easily identify Federal holidays as it relates to their compliance with applicable reporting requirements under part 39. The proposed amendments to § 39.2 would also provide foreign DCOs with greater clarity by excluding “foreign holidays” from the definition of “business day,” thereby eliminating the

requirement to report to the Commission on a non-trading day. After considering the other section 15(a) factors, the Commission believes they are not implicated by the proposed amendments.

5. Procedures for Registration—§ 39.3 and Form DCO

The Commission is proposing several changes to its procedures for DCO registration, including: The manner by which a DCO applicant would file supplemental information in proposed § 39.3(a)(3); procedures in proposed § 39.3(a)(4) to amend a pending application; the potential for an extension of the application review period in proposed § 39.3(a)(6); and the procedures for filing a request for an amended order of registration in proposed § 39.3(d). The Commission is also proposing to codify the statutory requirements in section 7 of the CEA to vacate an order of registration as well as specify the types of information that a DCO must provide to the Commission in this regard in proposed § 39.3(f); and clarify the types of information that a DCO must provide to request a transfer of open interest in proposed § 39.3(g). In addition, the Commission is proposing to revise Form DCO to correspond with proposed amendments to part 39 and to reflect Commission staff’s experience with DCO applications.

a. Benefits

The Commission believes the proposed amendments to the DCO registration procedures in § 39.3 and Form DCO will make the procedures more transparent to applicants. This should allow prospective DCO applicants to more efficiently prepare complete applications, which should reduce the need for Commission staff to request additional information after receiving the application and therefore reduce the overall time needed to review an application. For example, the Commission is modifying Form DCO to clarify the types of information that are required and align the exhibits with the amendments proposed under part 39. These proposed amendments may reduce an applicant’s time and resources used in responding to staff inquiries during the application review process, as DCO applicants would be better able to provide more complete, accurate, and nuanced application materials. The proposed amendments to § 39.3 would also adapt certain language to better reflect terminology applicable to DCOs in proposed § 39.3(a)(1) and (2) and (b), which could help to avoid confusion for potential DCO applicants and existing DCOs. Furthermore, the

Commission is proposing to codify its long-standing procedures for staying an application in proposed § 39.3(a)(6) to provide DCO applicants with greater transparency of the registration process.

The Commission is proposing to amend § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. This change would better reflect current practice, where a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Similarly, the Commission is proposing to specify in proposed § 39.3(f) the types of information that the Commission currently requests to determine whether to vacate an order of registration, which would provide DCOs with more transparency as to the types of information that are required as part of a request to vacate an order of registration. The proposed recordkeeping requirements in § 39.3(f)(1)(iii) and (iv), which would require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO, would provide the benefit of ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action.

The Commission also proposes to streamline the procedures for requesting a transfer of open interest by separating those procedures in existing § 39.3(g) from the procedures to notify the Commission of a DCO corporate structure or ownership change. Under the proposed amendments to § 39.3(g), a DCO seeking to transfer its open interest would be required to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. This would simplify the existing requirements and permit the transfer to take effect after a 45-day Commission review period. The Commission believes the 45-day period would ensure that clearing members are made aware of the intended transfer and allow the Commission to determine whether the transferee DCO is suitable to accept the transfer.

b. Costs

The Commission believes DCOs would not incur any additional costs associated with the proposed procedures to request an amended order of registration in § 39.3(d), as a DCO would incur the same costs if requesting to amend its order of registration by

using the current Form DCO.⁸³ As to the procedures to vacate a DCO's registration in proposed § 39.3(f), the Commission believes the costs would not be substantial. Any costs incurred by DCOs would more likely be due to the proposed recordkeeping requirements in § 39.3(f)(1)(iii) and (iv), which would require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO pursuant to § 1.31(b).

Finally, the Commission is proposing to amend § 39.3(g) to permit a DCO seeking to transfer its open interest to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. The Commission does not anticipate that DCOs would incur any additional costs as a result of these procedural changes beyond the costs to prepare a § 40.5 rule submission, which are likely to be similar to the costs of requesting an order approving the transfer. Additionally, the information requested in proposed § 39.3(g) reflects information that DCOs are already required to provide in order to transfer their open interest. The Commission does not believe DCOs would incur additional costs from any of the other proposed amendments to the DCO registration procedures in § 39.3.

c. Section 15(a) Factors

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the proposed changes to the registration procedures will maintain the protection of market participants and the public by ensuring that DCOs are in compliance with the DCO Core Principles and Commission regulations. The proposed changes would also increase efficiency by making the registration process more transparent. This would enable DCOs and DCO applicants to provide more complete documentation in a more concise manner, thereby reducing the time and resources needed to comply with such procedures. To the extent that the proposed changes to the registration procedures act to streamline the application process, as well as to establish the process for vacating a DCO's registration, the net result of those changes would be a more efficient

process for registering as a DCO and for vacating that registration.

Additionally, the Commission believes that the proposed amendments to § 39.3(g), which addresses a request to transfer a DCO's open interest, will result in increased efficiency because the proposed amendments streamline and improve the existing process, as DCOs would be able to use the existing process under § 40.5, with which DCOs are already familiar and which requires a shorter review period. As a result, DCOs may obtain approval to transfer their open interest in a timelier manner, which may benefit their operational and business needs. To that end, the Commission believes that these changes will have a beneficial effect on the risk management practices of DCOs, inasmuch as the proposed changes may modestly reduce the risks that may accompany the transfer of open interest to another DCO. Moreover, the proposed recordkeeping requirements for vacated DCOs will protect market participants and the public by ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

6. DCO Chief Compliance Officer—§ 39.10(c)

a. Benefits

The Commission is proposing to amend § 39.10(c) to allow a DCO to have its CCO report to the senior officer responsible for the DCO's clearing activities. This would provide DCOs with flexibility to structure the management and oversight of the CCO based on the DCO's particular corporate structure, size, and complexity. This may increase efficiency, reduce costs, and improve the quality of the oversight of the CCO, as the senior officer overseeing the DCO's clearing activities would be better positioned to provide day-to-day oversight of the CCO.

The Commission is proposing to amend certain requirements in § 39.10(c) relating to the CCO annual report to permit DCOs to incorporate by reference, for up to five years, any descriptions of written policies and procedures that have not materially changed since they were described within the most recent CCO annual report. The ability to incorporate by reference the description of written policies and procedures in the CCO annual report could reduce the time and costs needed to prepare the CCO annual

report.⁸⁴ The Commission is also proposing to remove the requirement that the DCO submit the CCO annual report at the same time as the DCO's fiscal year-end audited financial statement. This is consistent with the proposed change to § 39.19(c)(3)(iv), which would allow DCOs the flexibility to submit required annual reports and audited year-end financial statements when ready but not later than 90 days after the end of the DCO's fiscal year. The proposed changes recognize that the DCO's year-end audited financial statements are prepared separately from the CCO annual report and therefore would not need to be prepared and submitted together.

b. Costs

The Commission is proposing to amend § 39.10(c) to require that a DCO identify its compliance policies and procedures by name, rule number, or other identifier; describe the process by which the annual report was submitted to the board of directors or senior officer; and allow incorporation by reference in limited circumstances. The Commission notes that a number of DCOs already provide this information. Therefore, the Commission expects that the proposed changes to § 39.10(c) would not impose additional costs on those DCOs.⁸⁵

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that certain of the proposed changes to § 39.10(c) will enhance the protection of market participants and the public. Specifically, the proposed changes to a CCO's reporting lines, along with the added clarity regarding proper identification of the compliance policies and procedures in the CCO annual report, is anticipated to enhance the compliance function at DCOs, which may have the corresponding effect of improving the protections for market participants and the public. Additionally, in consideration of section 15(a)(2)(B) of the CEA, the proposed amendment to permit incorporation by reference in the CCO annual report will

⁸⁴ The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.a above.

⁸⁵ The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.a above.

⁸³ The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.1 above.

increase efficiency in preparing that report. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

7. Enterprise Risk Management— § 39.10(d)

a. Benefits

The Commission is proposing § 39.10(d) to require a DCO to have a program of enterprise risk management that identifies and assesses sources of risk and their potential impact on the operations and services of the DCO and identify an enterprise risk officer. The Commission believes that requiring DCOs to establish and maintain an enterprise risk management program in proposed § 39.10(d) may encourage DCOs to strengthen their existing programs, especially if a DCO lacks an enterprise risk management program that is commensurate with industry best practices. This may benefit the resiliency of individual DCOs' operations by requiring DCOs to proactively identify potential risks on an enterprise-wide basis beyond those that a DCO might otherwise identify pursuant to its compliance with specific requirements in part 39. Compliance with proposed § 39.10(d) by DCOs who are affiliated with other registered entities such as DCMs, SEFs, and SDRs could also benefit the financial markets more broadly, as risks identified and addressed by the DCO may also apply to their affiliates within the derivatives markets.

Consistent with § 39.10(b), the Commission does not intend to be overly prescriptive by requiring specific standards and methodologies. Proposed § 39.10(d)(3) would require a DCO to follow generally accepted standards and industry best practices with respect to the development and ongoing monitoring of its enterprise risk management framework, assessment of the performance of the enterprise risk management program, and the management and mitigation of risk to the DCO. The Commission is mindful that best practices evolve and change over time and does not, therefore, wish to prescribe specific standards in its regulations. This flexibility would allow DCOs to continue to develop enterprise risk management programs in a manner best suited for their specific risk exposures, product types, customer bases, market segments, and organizational structures, among other things, as long as their programs meet the proposed minimum standards and any other legal and regulatory requirements.

b. Costs

The Commission has found that DCOs that proactively identify and manage foreseeable risks have generally implemented enterprise risk management frameworks, in whole or in part, to identify, assesses, and manage sources of risk in a manner similar to the requirements proposed in § 39.10(d)(1)–(4). Therefore, the Commission believes that any additional costs associated with these requirements should be minimal relative to existing industry practice for those DCOs whose enterprise risk management programs are commensurate with industry best practices. Additionally, as DCOs would be able to comply with this requirement by including the DCO in the enterprise risk management program administered by the DCO's parent company or affiliate, the Commission believes any additional costs to comply with proposed § 39.10(d) could be reduced if the DCO is able to share the costs of compliance with its parent or affiliates. DCOs that do not have an enterprise risk management program in line with proposed § 39.10(d) or could not otherwise rely on its parent's or affiliate's enterprise risk management program would incur costs to implement such a program.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposal to require a DCO to have a formal enterprise risk management program will improve DCO risk management practices by ensuring that DCOs have a process for identifying and assessing potential risks to the DCO on an enterprise-wide basis, thereby enhancing protection of market participants and the public and the financial integrity of the derivatives markets. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

8. Financial Resources—§ 39.11

a. Benefits

The Commission is proposing certain changes to § 39.11, including: Clarifying how a DCO's largest financial exposure should be calculated in proposed § 39.11(c)(2); requiring a DCO to use the same stress test scenario to combine the customer and house stress test losses of

each clearing member in proposed § 39.11(c)(2)(ii); and requiring a DCO to adopt rules to specifically permit the netting of any gains in the house account with customer losses in the event of a member default (and prohibiting a DCO from netting losses in the house account with gains in the customer account consistent with section 4d of the CEA, which requires the segregation of customer funds) in proposed § 39.11(c)(2)(iii).

The Commission believes these proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress. This approach is consistent with recent guidance issued by CPMI-IOSCO suggesting that, when assessing the adequacy of their financial resources, CCPs should take into account only prefunded financial resources and ignore voluntary excess contributions. CCPs that wish to be considered QCCPs are expected to follow this guidance, so having Commission requirements that are consistent with the guidance would benefit DCOs.

Regulation 39.11(d)(2) sets out certain conditions that apply to a DCO's use of assessments for additional guaranty fund contributions in calculating the financial resources available to meet its obligations under § 39.11(a)(1). Regulation 39.11(d)(2)(iv) provides that a DCO shall only count the value of assessments, after a 30 percent haircut, "to meet up to 20 percent of those obligations." The Commission proposes to amend § 39.11(d)(2) to replace the phrase "those obligations" with "the total amount required under paragraph (a)(1) of this section," to provide DCOs with more clarity as to how to comply with this requirement.

Furthermore, the Commission is proposing amendments to § 39.11(e)(1)(iii) and (e)(3) to clarify that a DCO may use a committed line of credit or similar facility, in whole or in part, to satisfy § 39.11(e)(1)(ii) or (e)(2), as long as the committed line of credit or similar facility is not counted twice to meet the requirements of § 39.11(e)(1)(ii) and (e)(2). This is a clarification of the existing requirement, which provides a DCO with additional flexibility to optimize the liquidity resources it holds, which would potentially reduce certain opportunity costs associated with holding more expensive types of liquid resources, such as cash.

Regulation 39.11(f)(1)(ii) requires a DCO to file with the Commission a financial statement of the DCO or of its

parent company. The Commission is proposing to amend § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company in order to better and more accurately assess the financial strength of the DCO. The Commission believes it would also benefit the DCO to be able to assess its compliance with Core Principle B and § 39.11 and its financial health separately from that of its parent.

The Commission is proposing to amend the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. Although Commission regulations generally require financial statements to be prepared in accordance with U.S. GAAP, the Commission has permitted the use of IFRS by non-U.S. DCOs as a condition of each DCO's registration order. The proposed rule would retain this flexibility for non-U.S. DCOs and provide greater transparency to DCOs and DCO applicants of the financial reporting requirements.

In reviewing DCOs' financial statements, Commission staff has noted that the DCO's own capital allocated to meet the requirements of § 39.11(a)(1) or (2) often are not identified accordingly. The Commission therefore is proposing in § 39.11(f)(1)(ii) and (f)(2)(i) to require that assets allocated by the DCO for such purpose must be clearly identified on the DCO's balance sheet as held for that purpose. As a result, DCOs would have the opportunity to more clearly demonstrate that they have satisfied the requirements of § 39.11(a)(1) or (2) and, in doing so, may avoid unnecessary follow-up questions from Commission staff.

The Commission also is proposing to require in § 39.11(f)(2) that, in addition to its audited year-end financial statement, a DCO would be required to submit: (1) A reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the statements not misleading. Without such an explanation, Commission staff may be under the impression that the representations are false or incorrect. This requirement gives DCOs the opportunity to correct

any discrepancies and avoid unnecessary follow-up questions from Commission staff.

Regulation 39.11(f)(3) requires a DCO to provide to the Commission documentation of the DCO's financial resources methodology and basis for valuation and liquidity determinations as part of its quarterly financial reporting. The Commission is proposing to revise § 39.11(f)(3) to provide that a DCO must send this documentation to the Commission only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter. Not requiring this documentation to be provided each quarter could reduce a DCO's reporting costs.⁸⁶

The Commission is proposing to amend § 39.11(f)(4) to require that DCOs provide a certification as to the accuracy and completeness of the DCO's quarterly financial report filed pursuant to proposed § 39.11(f)(1), annual report filed pursuant to proposed § 39.11(f)(2), and any other reports filed pursuant to proposed § 39.11(f)(3). The Commission believes a certification requirement will provide greater transparency with regard to the submission process and may increase the level of accountability at the DCO, which may lead to greater accuracy in reporting.

b. Costs

DCOs could incur initial costs to recalibrate the method by which they compute their financial resources to comply with proposed § 39.11(c). If a DCO does not have financial resources sufficient to comply with § 39.11(a)(1) based on its computation pursuant to proposed § 39.11(c), the DCO would have to procure additional financial resources. Because DCOs vary in terms of their size and level of clearing activity, the Commission believes they are better positioned to provide cost estimates in this regard.

DCOs may incur costs to prepare their own financial statements (as opposed to financial statements of the parent company) in accordance with proposed § 39.11(f)(1)(ii). For DCOs that already prepare their own financial statements, incremental costs will not be as large as suggested by the regulatory baseline. DCOs may incur minimal costs in identifying in their balance sheet assets allocated to meet the requirements of § 39.11(a)(1) or (2). DCOs may also incur minimal costs to prepare a reconciliation of their balance sheet when material differences exist as

⁸⁶ The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.c.ii above.

compared to the DCO's financial statement for the last quarter of the fiscal year.

The Commission believes DCOs may incur additional costs associated with complying with the proposed certification requirements in § 39.11(f)(4). These costs may be reduced for DCOs that already provide them. The Commission recognizes that a DCO may have to develop a process in certifying its financial reports; however, the Commission believes that these costs may be reduced for DCOs to the extent that they already have this process in place.⁸⁷

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.11 will result in improved protections for market participants and the public. Specifically, the proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) and the corresponding improvements to a DCO's stress testing results are expected to enhance the safety and soundness of DCOs and their ability to manage their risks, thereby better protecting DCOs' clearing members and their customers, market participants, and the public. Additionally, in further consideration of section 15(a)(2)(A) of the CEA, the proposal to require in § 39.11(f)(1)(ii) the financial statement of the DCO and not that of its parent company, is expected to better and more accurately assess the financial strength of the DCO, which will ultimately serve to protect market participants and the public and further the financial integrity of derivatives markets. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the proposed amendments to § 39.11 will result in increased clarity or transparency, as explained above, those changes are anticipated to result in an incremental increase in efficiency. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress, thereby improving the DCO's risk

⁸⁷ See 17 CFR 228, 229, 232, 240, 249, 270 and 274.

management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

9. Participant and Product Eligibility—§ 39.12

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. As it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision, the Commission is proposing to revise § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps. This could reduce rulebook drafting costs for future DCO applicants that do not intend to accept swaps for clearing. The Commission believes the proposed amendments to § 39.12 would not impose costs on DCOs or swaps market participants, as they would not be clearing swaps through a DCO that does not accept swaps for clearing. The Commission has considered the section 15(a) factors and believes that they are not implicated by these proposed amendments.

10. Risk Management—§ 39.13

a. Benefits

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks include but are not limited to jump-to-default risk or similar jump risk. The Commission is proposing to amend § 39.13(g)(2)(i) to note that such risks also include “concentration of positions.” Recent events, including a significant loss from a default at a central counterparty outside of the Commission’s jurisdiction, highlight the importance of addressing those risks. This change would serve to benefit DCOs and their clearing members by making the rule more explicit.

Regulation 39.13(g)(3) requires a DCO to have its systems for initial margin requirements reviewed and validated by a qualified and independent party on a regular basis. The Commission is proposing to specify that “on a regular basis” means annually. Additionally, § 39.13(g)(3) provides that an employee of the DCO may conduct such independent validations as long as they are not responsible for the development or operation of the systems and models being tested. Proposed § 39.13(g)(3)

would expand the pool of eligible employees to include employees of an affiliate of the DCO, which would provide DCOs with greater flexibility in selecting appropriate staff to conduct the validations.

Furthermore, the Commission is proposing new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This proposal would ensure that back testing of a DCO’s initial margin model is more appropriately calibrated.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member’s customer account(s). Based on feedback received from DCOs, the Commission understands that there are significant operational issues that may affect the ability of clearing members to accurately determine the positions of individual customers on an intraday basis with respect to certain types of transactions (e.g., transfers, give-ups, and allocations of block orders) and with respect to certain types of market participants (e.g., locals and high frequency traders). Therefore, intraday gross margin calculations may result in some clearing members being charged too much margin and others being charged too little margin, which could necessitate significant end-of-day adjustments. Accordingly, the Commission proposes to amend § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. Proposed § 39.13(g)(8)(i) is consistent with market feedback and attempts to provide DCOs with more flexibility in meeting the requirements in light of the operational issues that may arise intraday.

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, “for non-hedge positions, at a level that is greater than 100 percent of the [DCO]’s initial margin requirements with respect to each product and swap portfolio.” Consistent with interpretative guidance issued by the Division, the Commission is proposing to amend § 39.13(g)(8)(ii) to permit DCOs to establish customer initial margin requirements based on the type of customer account and to apply prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account. The proposed amendments to § 39.13(g)(8)(ii) would give DCOs reasonable discretion in determining the

percentage by which customer initial margin requirements must exceed the DCO’s clearing initial margin requirements with respect to particular products or portfolios. This approach acknowledges that the existing standard does not appropriately take into account each DCO’s particular circumstances and the nature of its clearing members and their customers.

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member’s and/or the DCO’s financial resources. The Commission is proposing to note that such risk limits should also be imposed to address positions that may be difficult to liquidate. As noted above, recent events highlight the importance of imposing risk limits to address positions that may be difficult to liquidate, particularly concentrated positions. The proposed change would help to ensure that a DCO can properly manage its risks in instances where, for example, a position in a particular contract or swap is concentrated with a particular member, such that there is reason to doubt whether, in the event that this member defaults, other members would be willing and able to accept, collectively, the entirety of that position or swap.

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is proposing to clarify that DCOs should, having conducted such reviews, take appropriate actions to address concerns identified in such reviews, and require that the documentation of the reviews should include the basis for determining what action was appropriate to take. Absent such follow-up, the reviews would lack purpose. The proposed change would help to ensure that DCOs are taking steps to manage any risks posed by their members, thereby enhancing the DCO’s risk management functions.

b. Costs

The Commission is proposing to amend § 39.13(g)(2)(i) to clarify that a DCO shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including, but not limited to, concentration of positions. The Commission is merely clarifying that

concentrated positions are one of the risks that DCOs should be incorporating in their initial margin requirements. The Commission does not believe that DCOs, or their clearing members, would incur any additional costs with this clarification.

In addition, § 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that employees of the DCO may conduct the validations as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is proposing to amend § 39.13(g)(3) to specify that "on a regular basis" means annually and to also permit employees of an affiliate of the DCO to conduct such independent validations. The Commission believes these amendments would not impose additional costs on DCOs insofar as DCOs were already interpreting "regular" to mean annual, but rather may reduce costs by permitting the use of employees of a DCO's affiliate when conducting the independent validations.

The Commission is proposing new § 39.13(g)(7)(iii) to specify that, in conducting back tests of initial margin requirements, a DCO shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This change is intended to reflect existing practices; therefore, any costs associated with this change would be reduced for DCOs that already follow this approach.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). As noted above, after the regulation was adopted, Division staff learned of operational issues that DCOs would face if the provision applied to intraday settlements as well as end-of-day settlements. As a result, the Commission proposes to amend § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. Because this change is intended to reflect existing practice, any costs associated with this change would be reduced for those DCOs that already follow this approach.

Regulation 39.13(g)(8)(i)(B) provides that, for purposes of calculating the gross initial margin requirement for clearing members' customer accounts, a DCO may require its clearing members to report to the DCO the gross positions

of each individual customer or the sum of the gross positions of its customers. The Commission is proposing amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This will enable DCOs, in turn, to report this information to the Commission under § 39.19(c)(1)(i)(D), which, as proposed, would require DCOs to report the positions themselves (*i.e.*, the long and short positions) as well as risk sensitivities and valuation data for end-of-day positions. The Commission believes adopting and implementing such rules could impose nominal cost on DCOs. In addition, clearing members may incur costs associated with reporting this data to the extent they are not already doing so.

The Commission is proposing to amend § 39.13(g)(12) by requiring DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral from a quarterly basis to a monthly basis. Because § 39.11(d)(1) already requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a), and those resources include initial margin, the Commission does not believe this change will result in any increase in costs.

In § 39.13(h)(1)(i), the Commission is proposing to require that, in determining a clearing member's risk limits under existing § 39.13(h)(1)(i), the factors that a DCO considers must include the difficulty of liquidating the clearing member's positions. The Commission believes that this change may impose minimal costs.

In § 39.13(h)(5)(ii), the Commission is proposing to clarify that a DCO should take appropriate actions to address concerns identified in its review of the risk management policies of its clearing members. The Commission believes that DCOs already do this as part of their compliance with existing § 39.13(h)(5)(ii).

In § 39.13(i), the Commission is proposing to require a DCO to provide certain information as part of a rule filing submitted for Commission approval pursuant to § 40.5 to facilitate the Commission's review of a DCO's cross-margining program. This information includes: Identification of the products that would be eligible for cross-margining; analysis of the risk characteristics, the liquidity of the respective markets, and availability of reliable prices; financial and operational requirements that would apply to clearing members participating in the

program; a description and analysis of the margin methodology that would be used to calculate initial margin requirements; procedures the DCO would follow in the event of a clearing member default; a description of the arrangements for obtaining daily position data with respect to products in the account; whether funds to support the cross-margined positions will be maintained together in one account or in separate accounts at each participating clearing organization; and a copy of the agreement between the clearing organizations participating in the cross-margining program. A DCO may incur costs to prepare and provide this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the proposed amendments to § 39.13 will aid in the protection of market participants and the public by enhancing certain risk management requirements of DCOs. For example, proposed § 39.13(g)(12) would require DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral. Given that initial margin is held for risk management purposes, assessing haircuts more frequently would enhance a DCO's ability to manage its risks. In addition, the proposed amendments to § 39.13 will help preserve the efficiency and financial integrity of the derivatives markets by enhancing certain risk management requirements of DCOs. For example, in consideration of section 15(a)(2)(B) of the CEA, the Commission believes the proposed amendments to § 39.13(h)(1)(i), which would specify that a DCO's risk limits should address positions that may be difficult to liquidate, would help to ensure that a DCO can properly manage its risks in the event of a default, thereby promoting the financial integrity of the derivatives markets. The Commission also believes that the amendments to § 39.13 will strengthen and promote sound risk management practices across DCOs, their clearing members, and clearing members' customers. Specifically, the amendments enhance, clarify, and provide flexibility in complying with several DCO risk management requirements, which will aid DCOs in efficiently allocating their risk management attention and resources. Finally, in consideration of

section 15(a)(2)(E) of the CEA, the Commission notes the public interest in promoting and protecting public confidence in the safety and security of the financial markets. DCOs are essential to risk management in the financial markets, both systemically and on an individual firm level. The proposed amendments, by enhancing, clarifying, and providing flexibility beyond current requirements, promote the ability of DCOs to perform these risk management functions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

11. Treatment of Funds—§ 39.15

a. Benefits

The Commission is proposing to amend § 39.15(b)(1) to clarify that “funds and assets” are equivalent to “money, securities, and property,” which would better align the language of § 39.15(b)(1) with the language in the CEA. Furthermore, § 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps in a futures customer account subject to section 4d(a) of the CEA. The Commission is proposing to amend § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle such positions. This would better align the requirements of § 39.15(b)(2)(ii) with § 39.15(b)(2)(i), which requires a DCO that wants to commingle futures, options, and swaps in a cleared swaps customer account to file rules for Commission approval. This approach would reduce the burden on DCOs while providing the Commission with sufficient means to determine whether the customer funds will be adequately protected.

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer’s portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer. Based on feedback received from DCOs, the Commission is proposing to amend § 39.15(d) to delete the words “at the same time,” thus requiring the “prompt,” but not necessarily simultaneous, transfer of a customer’s positions and related funds. The Commission is further amending the

provision to require the transfer of related funds “as necessary,” recognizing that the transfer of customer positions will not always require the transfer of funds. These changes are meant to reflect common practice and provide greater flexibility to DCOs in transferring positions and funds. The Commission is also proposing to amend § 39.15(e), which relates to permitted investments of customer funds, to clarify that the regulation applies to any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. This change would ensure that cleared swaps customer collateral receives the same safekeeping as other funds and assets invested by DCOs and would reflect the Commission’s intent.

b. Costs

The Commission believes proposed amendments to § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle certain customer positions would streamline the procedures for a request to commingle customer funds and would not increase costs to DCOs. As discussed above, the proposal would potentially reduce costs for DCOs that would otherwise have to petition the Commission for an order providing relief from section 4d of the CEA in order to commingle such customer funds. The Commission has not identified any other costs associated with the proposed amendments to § 39.15, including costs to customers in this regard.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.15 will aid in the protection of market participants and the public, specifically customers of clearing members, by providing clarity on several requirements related to the treatment of customer funds, including with respect to the transfer of customer positions and funds under § 39.15(d). Moreover, the proposed amendments will promote efficiency in the derivatives markets by streamlining the procedures for a request to commingle customer funds, as DCOs would be

permitted to file rules for Commission approval whether requesting to commingle customer funds in a futures or cleared swaps customer account. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

12. Default Rules and Procedures—§ 39.16

a. Benefits

The Commission is proposing to amend § 39.16 to improve DCOs’ default management processes by, among other things: Requiring a DCO to include its clearing members in an annual test of its default management plan in proposed § 39.16(b); requiring the DCO to establish a default committee, which must include clearing members and other participants, that would convene in the event of a default involving substantial or complex positions to help identify any market issues that the DCO is considering in proposed § 39.16(c)(1); and requiring a DCO’s default management procedures to include immediately posting a declaration of a default on the DCO’s website in proposed § 39.16(c)(2)(ii). The proposed amendments are intended to ensure that clearing members are prepared in the event of a default.

The Commission is also proposing to amend § 39.16(c)(2)(iii)(C) to require any allocation of a defaulting clearing member’s positions to be proportional to the size of the participating or accepting clearing member’s positions in the same product class at the DCO. This proposed amendment would ensure that clearing members have the flexibility, but not the requirement, to participate in auctions and allocations beyond the proportional size of their respective positions as measured by the initial margin requirement for those positions. This ensures that clearing members cannot be forced to involuntarily absorb positions of a defaulting member which incentivizes the DCO to calibrate its risk management mechanisms in a manner to avoid a scenario in which clearing members’ participation in an auction or allocation falls short of the size of the defaulting clearing member’s positions in that product class.

b. Costs

To comply with the proposal to require the participation of clearing members in a test of a DCO’s default management plan and in a DCO’s default committee, a DCO may incur costs to coordinate clearing members’ participation and to establish a default committee. However, the Commission

believes that many DCOs already involve clearing members in their tests as a matter of best practice. The Commission is not aware of a less costly alternative that would provide clearing members with an opportunity to participate in key aspects of a DCO's default management.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include immediate public notice on the DCO's website of a declaration of default will aid in the protection of market participants and the public by ensuring more timely notice of a default. In further consideration of section 15(a)(2)(A) of the CEA, the Commission believes the proposed amendments to § 39.16(c)(2)(iii)(C) regarding the allocation of a defaulting clearing member's positions would protect clearing members from involuntarily having to bid on or accept defaulting positions that are not in proportion to the size of their positions in that product class, while also providing clearing members with the flexibility to voluntarily bid on or accept more than a proportional share of the defaulting positions if that clearing member has the ability to manage the risk of those new positions. In consideration of section 15(a)(2)(B) and (D) of the CEA, the Commission believes the additional amendments to § 39.16(b) and (c)(1) support the financial integrity of the derivatives markets and promote sound risk management practices by requiring DCOs to have greater clearing member participation in their default management processes and procedures. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

13. Rule Enforcement—§ 39.17

a. Benefits

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and dispute resolution. The Commission is proposing a technical change to § 39.17(a)(1) to emphasize that a DCO is required to monitor and enforce compliance by both itself and its

members with the DCO's rules. The Commission is also proposing to amend § 39.17(b), which permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee, to allow a DCO to delegate such responsibility to a committee other than the risk management committee. This would allow DCOs more discretion in delegating this function to the most appropriate committee.

b. Costs

The Commission does not believe the proposed amendments to § 39.17(a)(1) or (b) will impose any additional costs on DCOs or their members because the changes are technical in nature.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposed amendments to § 39.17 will promote sound risk management practices by emphasizing the importance of compliance with DCO rules and by providing DCOs with additional flexibility in structuring their governance arrangements. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

14. Reporting—§ 39.19

a. Benefits

The Commission is proposing several amendments to § 39.19 to add new requirements, clarify certain existing requirements, and incorporate other proposed amendments to part 39. The proposed amendments to § 39.19 would assist DCOs by codifying the bulk of DCOs' ongoing reporting requirements in one section of part 39 and providing additional detail with respect to certain requirements. In some cases, the Commission is proposing to adopt additional reporting requirements that would allow the Commission to conduct more effective oversight of DCOs' compliance with the DCO Core Principles and Commission regulations.

As part of the daily reporting requirements, the Commission is proposing to amend § 39.19(c)(1)(i)(A)–(C) to specify that a DCO is required to report margin, cash flow, and position information by individual customer account. The Commission believes the ability to analyze positions at the customer level is a crucial element of an effective risk surveillance program. The

ability to identify those customers whose positions create the most risk to a DCO's clearing members would assist the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated, thereby enhancing the protections afforded to the markets generally. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report the positions themselves (*i.e.*, the long and short positions) as well as risk sensitivities and valuation data for these positions.⁸⁸ This information will better inform staff of the assumptions incorporated into the position information. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to have DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member, which would help identify customers across clearing members and DCOs.

The Commission is proposing to add certain event-specific reporting requirements, including: A decrease in liquidity resources in proposed § 39.19(c)(4)(ii); a legal name change in proposed § 39.19(c)(4)(xi); a change in any liquidity funding arrangement in proposed § 39.19(c)(4)(xiii); a change in settlement bank arrangements in proposed § 39.19(c)(4)(xiv); a change in a DCO's arrangements with its depositories that hold customer funds in proposed § 39.19(c)(4)(xvi); a change in the DCO's fiscal year end in proposed § 39.19(c)(4)(xx); a change in the DCO's accounting firm in proposed § 39.19(c)(4)(xxi); major decisions of the DCO's board in proposed § 39.19(c)(4)(xxii); issues with a DCO's margin model in proposed § 39.19(c)(4)(xxiv) or settlement bank in proposed § 39.19(c)(4)(xv); and new futures or option products accepted for clearing by the DCO in proposed § 39.19(c)(4)(xxvi). The Commission believes it is important for it to be aware of these changes due to their potential impact on a DCO's operations.

b. Costs

The Commission expects a minimal cost burden with respect to the proposed changes to the event-specific reporting requirements under § 39.19(c)(4), in part because the incidents that would trigger such

⁸⁸ The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section IX.B.2.d above.

reporting do not occur very often. Furthermore, where reporting is required under § 39.19(c)(4), a DCO is required to provide a brief notice with only the pertinent details of the incident. Therefore, the Commission believes any costs imposed by these changes would be nominal.

With respect to daily reporting requirements, the Commission understands that most DCOs already report the information that would be required. Because staff guidance regarding the format and manner of this reporting is periodically updated, the Commission understands that there may be costs associated with making technical changes to accommodate these updates. The Commission requests an estimate of any such costs from DCOs that currently report this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the proposed amendments to § 39.19 will promote the protection of market participants and the public and contribute to sound risk management practices by providing the Commission with timely information that is critical to its risk surveillance efforts. Also, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes that requiring DCOs to provide notice to the Commission of certain additional events under § 39.19, such as a decrease in liquidity resources, settlement bank issues, and margin model issues, could further incentivize DCOs to avoid those risks, or to mitigate them more effectively if they do occur. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

15. Public Information—§ 39.21

a. Benefits

The Commission is proposing to amend the public reporting requirements of § 39.21 to require that DCOs make each of the items of information listed in proposed § 39.21(c)⁸⁹ available separately on the

DCO's website instead of merely including them in the DCO's rulebook. This would assist DCOs' current and prospective clearing members and the general public in locating the relevant information. Furthermore, § 39.21(c)(4) requires a DCO to publicly disclose the size and composition of its financial resource package available in the event of a clearing member default. To address questions concerning how often this information must be updated, the Commission is proposing to amend § 39.21(c)(4) to clarify that it should be updated quarterly, consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter. The proposed change would assist DCOs in complying with this requirement, while ensuring consistent and timely disclosure to the public.

b. Costs

Because the proposed amendments to § 39.21 merely require a DCO to separately make public information that would otherwise be made public in its rulebook, the Commission anticipates any additional costs to DCOs would be minimal.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A), (B), and (D) of the CEA, the Commission believes that the proposed amendments to § 39.21 would enhance existing protection of market participants and the public; promote the efficiency and financial integrity of the derivatives markets; and aid in sound risk management practices by ensuring that key public information about the DCO's operations is readily accessible, complete, and current. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

16. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

a. Benefits

The Commission is proposing to remove § 39.32, which sets forth requirements for governance

arrangements for SIDCOs and subpart C DCOs, and adopt new §§ 39.24, 39.25, and 39.26, which would incorporate all of the requirements of § 39.32. All DCOs, including SIDCOs and subpart C DCOs, would be subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements, which most DCOs already meet in order to be considered a QCCP. This would give DCOs clear direction on how to comply with Core Principles O, P, and Q,⁹⁰ the only DCO Core Principles for which the Commission has yet to adopt implementing regulations. Further, consistent with Core Principle Q, proposed § 39.26 would require that a DCO's governing board or committee includes market participants. Because the Commission has become aware of issues in interpreting this requirement, the Commission proposes to define "market participant," as well as specify that market participation is required on the DCO's governing board or governing committee, *i.e.*, the group with the ultimate decision-making authority. This would avoid ambiguity and provide DCOs with greater clarity.

b. Costs

DCOs may incur costs to comply with the proposed requirements in §§ 39.24, 39.25, and 39.26.⁹¹ Some DCOs must already comply with these standards and will not face incremental costs. The language that is proposed to be adopted in §§ 39.24, 39.25, and 39.26 is essentially the same as that which is included in § 39.32. Regulation 39.32 is applicable to SIDCOs and subpart C DCOs and implements guidance from the PFMI with which a CCP must comply in order to be considered a QCCP. Non-U.S. DCOs that are neither SIDCOs nor subpart C DCOs are generally held to these requirements by their home country regulators for the same reason. The Commission believes these standards are appropriate for all DCOs and incorporate best practices within the clearing industry.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. Although the Commission believes that most, if not all, DCOs already comply with these

⁸⁹ Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default;

(5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO.

⁹⁰ Core Principles O, P, and Q respectively address governance arrangements, conflicts of interest, and composition of governing boards.

⁹¹ The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section IX.B.2.g above.

requirements, to the extent they do not, the Commission believes the adoption of §§ 39.24, 39.25, and 39.26 would improve DCO risk management practices by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. This would further enhance the protection of market participants and the public and the financial integrity of the derivatives markets.

17. Legal Risk—§ 39.27

The Commission is proposing to amend § 39.27(c) to require a DCO that provides clearing services outside the United States to ensure that the memorandum required in Exhibit R of Form DCO remains accurate and up-to-date. This would ensure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions. The Commission believes this requirement would not impose additional costs on DCOs that already maintain compliance with § 39.27(c), as DCOs with prudent risk management practices should continuously assess their rules, procedures, and policies against the laws and regulations of the jurisdictions in which they operate. For the same reason, the Commission does not anticipate that this requirement will have a direct impact on any of the section 15(a) factors.

18. Fully-Collateralized Positions—§§ 39.2, 39.11, 39.12, 39.13, and 39.19

a. Benefits

As discussed above, fully-collateralized positions do not expose DCOs to many of the risks that traditionally margined products do. Full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division has granted relief from certain provisions of part 39 to DCOs that clear fully-collateralized positions. The Commission is proposing to codify this relief in order to provide greater clarity to DCOs and future applicants for DCO registration regarding how the regulations in part 39 apply to DCOs that clear fully-collateralized positions. DCOs that clear fully-collateralized positions would no longer need to request relief from

certain part 39 requirements nor attempt to comply with those requirements, thereby conserving such DCOs' time and resources.

b. Costs

The Commission does not anticipate any costs associated with these amendments, as the proposed rules remove requirements that need not apply to fully-collateralized positions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the proposal to codify relief that the Commission has granted to DCOs that clear fully-collateralized positions from requirements that do not apply to these positions, may increase operational efficiency for such DCOs. The proposed amendments should not impact the protection of market participants and the public, the financial integrity of markets, or sound risk management practices, as the requirements that the Commission is proposing to exclude for fully-collateralized positions do not further these factors when applied to such positions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

19. Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions—§§ 39.33, 39.36, 39.37, and Subpart C Election Form

a. Benefits

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is proposing to amend § 39.33(a)(1) by replacing the phrase "largest combined loss" with "largest combined financial exposure" in order to be consistent with Core Principle B and § 39.11(a)(1) regarding DCO financial resources requirements. The Commission is also proposing to amend § 39.33(c)(1) to clarify that the "largest aggregate liquidity obligation" means the total amount of cash, in each relevant currency, that the defaulted

clearing member would be required to pay to the DCO. Proposed § 39.33(c)(1) would reduce currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission is also proposing to amend § 39.33(d) to require that a SIDCO use available Federal Reserve Bank accounts and services where practical. This requirement would further enhance a SIDCO's financial integrity and management of liquidity risk, thereby promoting the financial integrity of the derivatives markets, while permitting SIDCOs to consider lower cost alternatives where appropriate.

Furthermore, the Commission is proposing to amend § 39.36(b)(2)(ii) to replace the words "produce accurate results" with "react appropriately" to better reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions, thereby enhancing the overall margin coverage. The Commission is also proposing to amend § 39.36(d), which requires each SIDCO and subpart C DCO to "regularly" conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted on at least an annual basis or more frequently if there are material relevant market developments. This would ensure that SIDCOs and subpart C DCOs continue to test their margin model with sufficient frequency.

Under § 39.37, a SIDCO or a subpart C DCO is required to publicly disclose its responses to the CPMI-IOSCO Disclosure Framework⁹² and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is proposing to amend § 39.37(b) to additionally require that a SIDCO or a subpart C DCO notify the Commission no later than ten business days after any updates to its responses to the CPMI-IOSCO Disclosure Framework to reflect material changes to the DCO's system or environment. The notice would need to identify changes made since the latest version of

⁹² See CPMI-IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf>.

the responses. The Commission is also proposing to amend § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI-IOSCO Public Quantitative Disclosure Standards for Central Counterparties. These proposed amendments would be consistent with SIDCOs' and subpart C DCOs' existing CPMI-IOSCO obligations.

The Commission is proposing to amend the subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election. Currently, unlike Form DCO, the subpart C Election Form references the corresponding regulations in subpart C but does not specify the type or level of information that must be filed as an exhibit. The proposed amendments are intended to provide greater transparency and clarity as to the type of information required.

b. Costs

Because most of the proposed changes to subpart C of part 39 are meant to clarify existing requirements, the Commission does not expect that SIDCOs and subpart C DCOs would incur additional costs. Where reporting is required under proposed § 39.37(b), the Commission believes any cost associated with such notice would be nominal for SIDCOs and subpart C DCOs, as they would already be required to periodically update the information publicly.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (B) of the CEA, respectively, the Commission believes that the proposed amendments would protect market participants and the public, and promote the financial integrity of SIDCOs and the derivatives markets by, for example, clarifying SIDCO financial resources requirements, requiring the use of central bank accounts, where practical, and ensuring that SIDCOs continue to test their margin models with sufficient frequency. Moreover, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes the proposed amendments to § 39.33(c)(1) would

promote sound risk management policies by reducing currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

20. Part 140—Organization, Functions, and Procedures of the Commission

a. Benefits

The Commission is proposing to amend § 140.94 to provide the Director of the Division with delegated authority to review DCO registration applications, determine whether an application is materially complete, request additional information in support of an application, stay the running of the 180-day review period for an application, and request additional information in support of a rule submission. The Commission believes that DCOs would benefit from the proposed delegation of authority, as it would promote a more efficient process to address these aspects of registration and rule certification.

b. Costs

The Commission has not identified any costs on DCOs or their members associated with the proposed amendments to § 140.94.

c. Section 15(a) Factors

The Commission has considered the section 15(a) factors and believes that they are not implicated by this proposed amendment.

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 the CEA, in issuing any order or adopting any Commission rule or regulation.⁹³

The Commission believes that the public interest to be protected by the antitrust laws is generally the promotion of competition. The Commission requests comment on whether the proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws. The Commission has considered the proposed rulemaking to determine whether it is anticompetitive and has

identified no anticompetitive effects. The Commission requests comment on whether the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has determined that the proposed rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

List of Subjects

17 CFR Part 1

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

17 CFR Part 39

Application form, Business and industry, Commodity futures, Consumer protection, Default rules and procedures, Definitions, Enforcement authority, Participant and product eligibility, Reporting and recordkeeping requirements, Risk management, Settlement procedures, Swaps, Treatment of funds.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I 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, 6o, 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. In § 1.20, revise paragraphs (d)(1), (7), and (8) introductory text to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

(d) * * *

(1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or

⁹³ 7 U.S.C. 19(b).

futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *provided, however*, that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules in this chapter, and orders promulgated thereunder, and in such cases, the requirements set forth in paragraphs (d)(3) through (6) of this section shall not apply to the futures commission merchant.

* * * * *

(7) Where a written acknowledgment is required, the futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) Where a written acknowledgment is required, a futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

* * * * *

■ 3. In § 1.59, revise paragraph (a)(1) to read as follows:

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) * * *

(1) *Self-regulatory organization* means a “self-regulatory organization,” as defined in § 1.3.

* * * * *

■ 4. In § 1.63, revise paragraph (a)(1) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(1) *Self-regulatory organization* means a “self-regulatory organization,” as defined in § 1.3, except as defined in paragraph (b)(6) of this section.

* * * * *

■ 5. In § 1.64, revise paragraph (a)(1) to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

(a) * * *

(1) *Self-regulatory organization* means “self-regulatory organization,” as defined in § 1.3.

* * * * *

■ 6. In § 1.69, revise paragraph (a)(7) to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) * * *

(7) *Self-regulatory organization* means a “self-regulatory organization,” as defined in § 1.3, but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

■ 8. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purposes of this part:

Activity with a more complex risk profile includes:

(1) Clearing credit default swaps, credit default futures, or derivatives that reference either credit default swaps or credit default futures and

(2) Any other activity designated as such by the Commission pursuant to § 39.33(a)(3).

Back test means a test that compares a derivatives clearing organization’s initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Business day means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, Federal holidays established under 5 U.S.C. 6103, and foreign holidays. For purposes of this provision, a foreign holiday is a day on which a derivatives clearing organization and its domestic financial markets are closed for a holiday that is not a Federal holiday in the United States.

Customer account or customer origin means “customer account” as defined in § 1.3 of this chapter.

Depository institution has the meaning set forth in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

Enterprise risk management means an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise’s risk appetite and provides reasonable assurance that the derivatives clearing

organization can continue to achieve its objectives.

Fully-collateralized position means a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a counterparty could incur upon liquidation or expiration of the contract.

House account or house origin means a clearing member account which is not subject to section 4d(a) or 4d(f) of the Act.

Key personnel means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations in this chapter, and orders promulgated thereunder. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: Chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; chief information security officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

Stress test means a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of the financial resources of such entities.

Subpart C derivatives clearing organization means any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3 of this chapter, which:

(1) Is registered as a derivatives clearing organization under section 5b of the Act;

(2) Is not a systemically important derivatives clearing organization; and

(3) Has become subject to the provisions of subpart C of this part, pursuant to § 39.31.

Systemically important derivatives clearing organization means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

Trust company means a trust company that is a member of the Federal Reserve System, under section 1 of the Federal Reserve Act (12 U.S.C. 221), but that does not meet the definition of depository institution as set out in this section.

U.S. branch or agency of a foreign banking organization means the U.S. branch or agency of a foreign banking organization as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

■ 9. Revise § 39.3 to read as follows:

§ 39.3 Procedures for registration.

(a) *Application for registration—(1) General procedure.* An entity seeking to register as a derivatives clearing organization shall file an application for registration with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act, and may approve or deny the application. If the Commission approves the application, the Commission will register the applicant as a derivatives clearing organization subject to conditions as appropriate.

(2) *Application.* Any entity seeking to register as a derivatives clearing organization shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to this part (application). The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.

(3) *Submission of supplemental information.* The filing of a completed application is a minimum requirement and does not create a presumption that the application is materially complete or that supplemental information will not be required. At any time during the application review process, the Commission may request that the applicant provide supplemental information in order for the Commission to process the application. The applicant shall provide supplemental

information in the format and manner specified by the Commission.

(4) *Application amendments.* An applicant shall promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application. An applicant is only required to submit exhibits and other information that are relevant to the application amendment when filing a Form DCO for the purpose of amending its pending application.

(5) *Public information.* The following sections of all applications to become a registered derivatives clearing organization will be public: First page of the Form DCO cover sheet (up to and including the General Information section), Exhibit A–1 (regulatory compliance chart), Exhibit A–2 (proposed rulebook), Exhibit A–3 (narrative summary of proposed clearing activities), Exhibit A–7 (documents setting forth the applicant's corporate organizational structure), Exhibit A–8 (documents establishing the applicant's legal status and certificate(s) of good standing or its equivalent), and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(6) *Extension of time for review.* The Commission may further extend the review period in paragraph (a)(1) of this section for any period of time to which the applicant agrees in writing.

(b) *Stay of application review—(1) By the Commission.* The Commission may stay the running of the 180-day review period if an application is materially incomplete, in accordance with section 6(a) of the Act.

(2) *Delegation of authority.* (i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to notify an applicant seeking registration as a derivatives clearing organization that the application is materially incomplete and the running of the 180-day period under section 6(a) of the Act is stayed.

(ii) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this paragraph (b)(2).

(iii) Nothing in this paragraph (b)(2) prohibits the Commission, at its election, from exercising the authority delegated in paragraph (b)(2)(i) of this section.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing such a request with the Secretary of the Commission in the format and manner specified by the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Amendment of an order of registration.* (1) A derivatives clearing organization requesting an amendment to an order of registration shall file the request with the Secretary of the Commission in the form and manner specified by the Commission.

(2) A derivatives clearing organization shall provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review a request to amend an order of registration.

(3) The Commission shall issue an amended order of registration upon a Commission determination, in its own discretion, that the derivatives clearing organization would maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order. If deemed appropriate, the Commission may issue an amended order of registration subject to conditions.

(4) The Commission may decline to issue an amended order based upon a Commission determination, in its own discretion, that the derivatives clearing organization would not continue to maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order.

(e) *Reinstatement of dormant registration.* Before accepting products for clearing, a dormant derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Vacation of registration—(1) Request.* A registered derivatives clearing organization may have its registration vacated pursuant to section 7 of the Act by submitting a request to the Secretary of the Commission in the format and manner specified by the Commission. A vacation of registration shall not affect any action taken or to be

taken by the Commission based upon actions, activities or events occurring during the time that the derivatives clearing organization was registered with the Commission. The request shall include:

(i) The date that the vacation should take effect, which must be at least ninety days after the request was submitted;

(ii) A description of how the derivatives clearing organization intends to transfer or otherwise unwind all open positions at the derivatives clearing organization and how such actions reflect the interests of affected clearing members and their customers;

(iii) A statement that the derivatives clearing organization will continue to maintain its books and records for the requisite statutory and regulatory retention periods after its registration has been vacated; and

(iv) A statement that the derivatives clearing organization will continue to make its books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as required by § 1.31 of this chapter.

(2) *Notice to registered entities.* The Commission shall fulfill its obligation to send a copy of the request and the order of vacation to all other registered entities by posting the documents on the Commission website.

(g) *Request for transfer of open interest—(1) Submission.* A derivatives clearing organization seeking to transfer its positions comprising open interest for clearing and settlement to another derivatives clearing organization shall submit rules for Commission approval pursuant to § 40.5 of this chapter.

(2) *Required information.* The rule submission shall include, at a minimum, the following:

(i) The underlying agreement that governs the transfer;

(ii) A description of the transfer, including the reason for the transfer and the impact of the transfer on the rights and obligations of clearing members and market participants holding the positions that comprise the derivatives clearing organization's open interest;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations in this chapter;

(iv) The transferee's rules marked to show changes that would result from acceptance of the transferred positions;

(v) A list of products for which the derivatives clearing organization requests transfer of open interest; and

(vi) A representation by the transferee that it is in and will maintain compliance with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations in this chapter upon the transfer of the open interest.

(3) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (g)(1) of this section, and may grant approval of the rules in accordance with § 40.5 of this chapter.

■ 10. In § 39.4, revise paragraphs (a) and (e) to read as follows:

§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.

(a) *Request for approval of rules.* A registered derivatives clearing organization may request, pursuant to the procedures of § 40.5 of this chapter, that the Commission approve any or all of its rules and subsequent amendments thereto, including operational rules, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at any time thereafter, under the procedures of § 40.5 of this chapter. A derivatives clearing organization may label as "approved by the Commission" only those rules that have been so approved.

(e) *Holding securities in a futures portfolio margining account.* A derivatives clearing organization seeking to provide a portfolio margining program under which securities would be held in a futures account as defined in § 1.3 of this chapter, shall submit rules to implement such portfolio margining program for Commission approval in accordance with § 40.5 of this chapter. Concurrent with the submission of such rules for Commission approval, the derivatives clearing organization shall petition the Commission for an order under section 4d(a) of the Act.

■ 11. In § 39.10, revise paragraphs (c)(1), (3) and (4) and add paragraph (d) to read as follows:

§ 39.10 Compliance with core principles.

* * * * *

(c) * * *

(1) *Designation.* Each derivatives clearing organization shall establish the position of chief compliance officer, designate an individual to serve as the chief compliance officer, and provide the chief compliance officer with full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer,

appropriate compliance policies and procedures, to fulfill the duties set forth in the Act and Commission regulations in this chapter.

(i) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual who would be disqualified from registration under sections 8a(2) or 8a(3) of the Act may serve as the chief compliance officer.

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities. The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors or the senior officer at least once a year.

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(x).

* * * * *

(3) *Annual report.* The chief compliance officer shall, not less than annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's written policies and procedures, including the code of ethics and conflict of interest policies; provided that, to the extent that the derivatives clearing organization's written policies and procedures have not materially changed since they were most recently described in an annual report to the Commission, and if the annual report containing the most recent description was submitted within the last five years, the annual report may instead incorporate by reference the relevant descriptions from the most recent annual report containing the description;

(ii) Review each core principle and applicable Commission regulation in this chapter including, in the case of systemically important derivatives clearing organizations and subpart C derivatives clearing organizations, regulations in subpart C of this part, and with respect to each:

(A) Identify, by name, rule number, or other identifier, the compliance policies

and procedures that are designed to ensure compliance with each core principle and applicable regulation in this chapter;

(B) Provide an assessment as to the effectiveness of these policies and procedures;

(C) Discuss areas for improvement, and recommend potential or prospective changes or improvements to the derivatives clearing organization's compliance program and resources allocated to compliance;

(iii) List any material changes to compliance policies and procedures since the last annual report;

(iv) Describe the financial, managerial, and operational resources set aside for compliance with the Act and Commission regulations in this chapter; and

(v) Describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report, and describe the corresponding action taken.

(4) *Submission of annual report to the Commission.* (i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities, for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with the requirement in this paragraph (c)(4)(i). The annual report shall describe the process by which it was submitted to the board of directors or the senior officer, including the date of submission.

(ii) The annual report shall be submitted to the Secretary of the Commission in the format and manner specified by the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual report is accurate and complete.

(iii) The derivatives clearing organization shall promptly submit an amended annual report if material errors or omissions in the report are identified after submission. An amendment must contain the certification required under paragraph (c)(4)(ii) of this section.

(iv) A derivatives clearing organization may request from the

Commission an extension of time to submit its annual report in accordance with § 39.19(c)(3).

* * * * *

(d) *Enterprise risk management*—(1) *General.* A derivatives clearing organization shall have an enterprise risk management program that identifies and assesses sources of risk and their potential impact on the operations and services of the derivatives clearing organization. The derivatives clearing organization shall measure, monitor, and manage identified sources of risk on an ongoing basis, including through the development and use of appropriate information systems. The derivatives clearing organization shall test the effectiveness of any mitigating controls employed to reduce identified sources of risk to ensure that the risks are properly mitigated.

(2) *Enterprise risk management framework.* A derivatives clearing organization shall establish and maintain written policies and procedures, approved by its board of directors or a committee of the board of directors that establish an appropriate enterprise risk management framework. The framework shall be reviewed at least annually by the board of directors or committee of the board of directors and updated as necessary.

(3) *Standards for enterprise risk management framework.* A derivatives clearing organization shall follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization.

(4) *Enterprise risk officer.* A derivatives clearing organization shall identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the enterprise risk management program of the derivatives clearing organization. The enterprise risk officer shall have the authority, independence, resources, expertise, and access to relevant information necessary to fulfil the responsibilities of the position consistent with the requirements of this section.

■ 12. Revise § 39.11 to read as follows:

§ 39.11 Financial resources.

(a) *General.* A derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization. A derivatives clearing

organization shall maintain sufficient financial resources to cover its exposures with a high degree of confidence. At a minimum, each derivatives clearing organization shall possess financial resources that exceed the total amount that would:

(1) Enable the derivatives clearing organization to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the derivatives clearing organization in extreme but plausible market conditions; Provided that if a clearing member controls another clearing member or is under common control with another clearing member, the affiliated clearing members shall be deemed to be a single clearing member for purposes of the provision in this paragraph (a)(1); and

(2) Enable the derivatives clearing organization to cover its operating costs for a period of at least one year, calculated on a rolling basis. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the derivatives clearing organization can continue to provide services as a going concern.

(b) *Types of financial resources.* (1) Financial resources available to satisfy the requirements of paragraph (a)(1) of this section may include:

(i) The derivatives clearing organization's own capital;

(ii) Guaranty fund deposits;

(iii) Default insurance;

(iv) Potential assessments for additional guaranty fund contributions, if permitted by the derivatives clearing organization's rules; and

(v) Any other financial resource deemed acceptable by the Commission.

(2) Financial resources available to satisfy the requirements of paragraph (a)(2) of this section shall include:

(i) The derivatives clearing organization's own capital; and

(ii) Any other financial resource deemed acceptable to the Commission.

(3) A financial resource may be allocated, in whole or in part, to satisfy the requirements of either paragraph (a)(1) or (2) of this section, but not both paragraphs, and only to the extent the use of such financial resource is not otherwise limited by the Act, Commission regulations in this chapter, the derivatives clearing organization's rules, or any other contractual arrangements to which the derivatives clearing organization is a party.

(c) *Calculation of financial resources requirements.* (1) A derivatives clearing organization shall, on a monthly basis, perform stress tests that will allow it to make a reasonable calculation of the financial resources needed to meet the requirements of paragraph (a)(1) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to calculate the requirements, subject to the limitations identified in paragraph (c)(2) of this section, and provided that the methodology must take into account both historical data and hypothetical scenarios. The Commission may review the methodology and require changes as appropriate. The requirements of this paragraph (c) do not apply to fully-collateralized positions.

(2) When calculating its largest financial exposure, a derivatives clearing organization:

(i) In netting its exposure against the clearing member's initial margin, shall:

(A) Use that portion of the margin amount on deposit that is required; and

(B) Use customer initial margin only to the extent permitted by parts 1 and 22 of this chapter, as applicable;

(ii) Shall combine the customer and house stress test losses of each clearing member using the same stress test scenarios;

(iii) May net any gains in the house account with losses in the customer account, if permitted by the derivatives clearing organization's rules, but shall not net losses in the house account with gains in the customer account; and

(iv) With respect to a clearing member's cleared swaps customer account, may net gains for one customer against losses for another customer only to the extent permitted by the derivatives clearing organization's rules.

(3) A derivatives clearing organization shall, on a monthly basis, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a)(2) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) *Valuation of financial resources.*

(1) At appropriate intervals, but not less than monthly, a derivatives clearing organization shall compute the current market value of each financial resource used to meet its obligations under paragraph (a) of this section. Reductions in value to reflect credit, market, and

liquidity risks (haircuts) shall be applied as appropriate and evaluated on a monthly basis.

(2) If assessments for additional guaranty fund contributions are permitted by the derivatives clearing organization's rules, in calculating the financial resources available to meet its obligations under paragraph (a)(1) of this section:

(i) The derivatives clearing organization shall have rules requiring that its clearing members have the ability to meet an assessment within the time frame of a normal end-of-day variation settlement cycle;

(ii) The derivatives clearing organization shall monitor the financial and operational capacity of its clearing members to meet potential assessments;

(iii) The derivatives clearing organization shall apply a 30 percent haircut to the value of potential assessments; and

(iv) The derivatives clearing organization shall only count the value of assessments, after the haircut, to meet up to 20 percent of the total amount required under paragraph (a)(1) of this section.

(e) *Liquidity of financial resources.*

(1)(i) The derivatives clearing organization shall effectively measure, monitor, and manage its liquidity risks, maintaining sufficient liquid resources such that it can, at a minimum, fulfill its cash obligations when due. The derivatives clearing organization shall hold assets in a manner where the risk of loss or of delay in its access to them is minimized.

(ii) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(1) of this section shall be sufficiently liquid to enable the derivatives clearing organization to fulfill its obligations as a central counterparty during a one-day settlement cycle. The derivatives clearing organization shall maintain cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation, in an amount greater than or equal to an amount calculated as follows:

(A) Calculate the average daily settlement variation pay for each clearing member over the last fiscal quarter;

(B) Calculate the sum of those average daily settlement variation pays; and

(C) Using that sum, calculate the average of its clearing members' average daily settlement variation pays.

(iii) If the total amount of the financial resources required pursuant to the calculation set forth in paragraph (e)(1)(ii) of this section is insufficient to enable the derivatives clearing

organization to fulfill its obligations during a one-day settlement cycle, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the remainder of the requirement of this paragraph (e) (subject to the limitation in paragraph (e)(3) of this section).

(iv) A derivatives clearing organization is not subject to paragraph (e)(1)(ii) of this section for fully-collateralized positions.

(2) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(2) of this section must include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) sufficient to enable the derivatives clearing organization to cover its operating costs for a period of at least six months. If the financial resources allocated to meet the requirements of paragraph (a)(2) of this section do not include such assets in a sufficient amount, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the requirements of this paragraph (subject to the limitation in paragraph (e)(3) of this section).

(3) A committed line of credit or similar facility may be allocated, in whole or in part, to satisfy the requirements of either paragraph (e)(1)(ii) or (e)(2) of this section, but not both paragraphs.

(4)(i) Assets in a guaranty fund shall have minimal credit, market, and liquidity risks and shall be readily accessible on a same-day basis;

(ii) Cash balances shall be invested or placed in safekeeping in a manner that bears little or no principal risk; and

(iii) Letters of credit shall not be a permissible asset for a guaranty fund.

(f) *Reporting requirements*—(1) *Quarterly reporting.* Each fiscal quarter, or at any time upon Commission request, a derivatives clearing organization shall:

(i) Report to the Commission:

(A) The amount of financial resources necessary to meet the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable;

(B) The value of each financial resource available, computed in accordance with the requirements of paragraph (d) of this section; and

(C) The manner in which the derivatives clearing organization meets the liquidity requirements of paragraph (e) of this section.

(ii) Provide the Commission with a financial statement, including the balance sheet, income statement, and

statement of cash flows, prepared in accordance with U.S. generally accepted accounting principles, of the derivatives clearing organization; *provided, however,* that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board. The balance sheet must identify any assets allocated to satisfy the requirements of paragraph (a)(1) or (2) of this section as held for that purpose; and

(iii) Report to the Commission the value of each individual clearing member's guaranty fund deposit, if the derivatives clearing organization reports having guaranty fund deposits as a financial resource available to satisfy the requirements of paragraph (a)(1) of this section and §§ 39.33(a) and 39.39(d), if applicable.

(iv) The calculations required by this paragraph (f) shall be made as of the last business day of the derivatives clearing organization's fiscal quarter. The report shall be submitted not later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(2) *Annual reporting.* (i) A derivatives clearing organization shall submit to the Commission an audited year-end financial statement of the derivatives clearing organization calculated in accordance with U.S. generally accepted accounting principles; *provided, however,* that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board. The balance sheet must identify any assets allocated to satisfy the requirements of paragraph (a)(1) or (2) of this section as held for that purpose.

(ii) The report required by paragraph (f)(2)(i) of this section shall be submitted not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(iii) A derivatives clearing organization shall submit concurrently with the audited year-end financial

statement required by paragraph (f)(2)(i) of this section:

(A) A reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the derivatives clearing organization's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating; and

(B) Such further information as may be necessary to make the statements not misleading.

(3) *Other reporting.* (i) A derivatives clearing organization shall provide to the Commission as part of its first report under paragraph (f)(1) of this section, and in the event of any change thereafter:

(A) Sufficient documentation explaining the methodology used to compute its financial resources requirements under paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in paragraphs (d) and (e) of this section.

(ii) A derivatives clearing organization shall provide to the Commission copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the derivatives clearing organization's conclusions regarding its:

(A) Financial resources available to satisfy the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Liquidity resources available to satisfy the requirements of paragraph (e) of this section and § 39.33(c), if applicable.

(4) *Certification.* A derivatives clearing organization shall provide with each report submitted pursuant to this section a certification by the person responsible for the accuracy and completeness of the report that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the report is accurate and complete.

■ 13. In § 39.12, revise paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(4), (5) and (6), (b)(1) introductory text, and (b)(2) to read as follows:

§ 39.12 Participant and product eligibility.

(a) *Participant eligibility.* A derivatives clearing organization shall have appropriate admission and continuing participation requirements for clearing members of the derivatives

clearing organization that are objective, publicly disclosed, and risk-based.

(1) *Fair and open access for participation.* The participation requirements shall permit fair and open access.

(i) A derivatives clearing organization shall not have restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

* * * * *

(4) *Monitoring.* A derivatives clearing organization shall have procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) *Reporting.* (i) A derivatives clearing organization shall require all clearing members, including non-futures commission merchants, to provide to the derivatives clearing organization periodic financial reports that contain any financial information that the derivatives clearing organization determines is necessary to assess whether participation requirements are being met on an ongoing basis.

(ii) A derivatives clearing organization shall require clearing members that are futures commission merchants to provide the financial reports that are specified in § 1.10 of this chapter to the derivatives clearing organization.

(iii) A derivatives clearing organization shall require clearing members that are not futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission upon the Commission's request or, in lieu of imposing the requirement in this paragraph (a)(5)(iii), a derivatives clearing organization may provide such financial reports directly to the Commission upon the Commission's request.

(iv) A derivatives clearing organization shall have rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements under this section.

(v) The requirements in paragraphs (a)(5)(i) and (iii) of this section shall not apply with respect to non-futures commission merchant clearing members of a derivatives clearing organization

that only clear fully-collateralized positions.

(6) *Enforcement.* A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall have procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) * * *

(1) A derivatives clearing organization shall have appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility include, but are not limited to:

* * * * *

(2) A derivatives clearing organization that clears swaps shall have rules providing that all swaps with the same terms and conditions, as defined by product specifications established under derivatives clearing organization rules, submitted to the derivatives clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization.

* * * * *

■ 14. In § 39.13, revise paragraphs (b), (f), (g)(2)(i), (g)(3), (g)(4)(i) introductory text, (g)(7), (8) and (12), (h)(1)(i) introductory text, and (h)(3) and (5) and add paragraph (i) to read as follows:

§ 39.13 Risk management.

* * * * *

(b) *Risk management framework.* A derivatives clearing organization shall have and implement written policies, procedures, and controls, approved by its board of directors, that establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the derivatives clearing organization is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary.

* * * * *

(f) *Limitation of exposure to potential losses from defaults.* A derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit its exposure to potential losses from defaults by its

clearing members to minimize the risk that:

(1) The operations of the derivatives clearing organization would be disrupted; and

(2) Non-defaulting clearing members would be exposed to losses that non-defaulting clearing members cannot anticipate or control.

(g) * * *

(2) * * *

(i) A derivatives clearing organization shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios, including but not limited to jump-to-default risk or similar jump risk, and concentration of positions.

* * * * *

(3) *Independent validation.* A derivatives clearing organization shall have its systems for generating initial margin requirements, including its theoretical models, reviewed and validated by a qualified and independent party on an annual basis. Such qualified and independent parties may be independent contractors or employees of the derivatives clearing organization, or of an affiliate of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems and models being tested.

(4) * * *

(i) A derivatives clearing organization may allow reductions in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a conceptual basis for the correlation in addition to an exhibited statistical correlation. That conceptual basis may include, but is not limited to, the following:

* * * * *

(7) *Back tests.* A derivatives clearing organization shall conduct back tests, as defined in § 39.2, using an appropriate time period but not less than the previous 30 days, as follows:

(i) On a daily basis, a derivatives clearing organization shall conduct back tests with respect to products or swap portfolios that are experiencing significant market volatility, to test the adequacy of its initial margin requirements, as follows:

(A) For that product if the derivatives clearing organization uses a product-based margin methodology;

(B) For each spread involving that product if there is a defined spread margin rate;

(C) For each account held by a clearing member at the derivatives clearing organization that contains a significant position in that product, by house origin and by each customer origin; and

(D) For each such swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner.

(ii) On at least a monthly basis, a derivatives clearing organization shall conduct back tests to test the adequacy of its initial margin requirements, as follows:

(A) For each product for which the derivatives clearing organization uses a product-based margin methodology;

(B) For each spread for which there is a defined spread margin rate;

(C) For each account held by a clearing member at the derivatives clearing organization, by house origin and by each customer origin; and

(D) For each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner.

(iii) In conducting back tests of initial margin requirements, a derivatives clearing organization shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

(8) *Customer margin—(i) Gross margin.* (A) During the end-of-day settlement cycle, a derivatives clearing organization shall collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member.

(B) For purposes of calculating the gross initial margin requirement for each clearing member's customer account(s), a derivatives clearing organization shall have rules that require its clearing members to provide to the derivatives clearing organization reports each day setting forth end-of-day gross positions of each beneficial owner within each customer origin of the clearing member.

(C) A derivatives clearing organization may not, and may not permit its clearing members to, net positions of different customers against one another.

(D) A derivatives clearing organization may collect initial margin for its clearing members' house accounts on a net basis.

(ii) *Customer initial margin requirements.* A derivatives clearing

organization shall require its clearing members to collect customer initial margin at a level that is not less than 100 percent of the derivatives clearing organization's clearing initial margin requirements with respect to each product and portfolio and commensurate with the risk presented by each customer account. The derivatives clearing organization shall have reasonable discretion in determining whether and by how much such customer initial margin requirements must exceed the derivatives clearing organization's clearing initial margin requirements with respect to particular products or portfolios. The Commission may review such customer initial margin levels and require different levels if the Commission deems the levels insufficient to protect the financial integrity of the derivatives clearing organization or its clearing members.

(iii) *Withdrawal of customer initial margin.* A derivatives clearing organization shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization.

* * * * *

(12) *Haircuts.* A derivatives clearing organization shall apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations, taking into consideration stressed market conditions, and shall evaluate the appropriateness of the haircuts on at least a monthly basis.

* * * * *

(h) * * *

(1) * * *

(i) A derivatives clearing organization shall impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the derivatives clearing organization's financial resources, and to address positions that may be difficult to liquidate. The derivatives clearing organization shall have reasonable discretion in determining:

* * * * *

(3) *Stress tests.* A derivatives clearing organization shall conduct stress tests, as defined in § 39.2, as follows:

(i) On a daily basis, a derivatives clearing organization shall conduct stress tests with respect to each large trader who poses significant risk to a clearing member or the derivatives clearing organization, including futures, options, and swaps cleared by the derivatives clearing organization, which are held by all clearing members carrying accounts for each such large trader. The derivatives clearing organization shall have reasonable discretion in determining which traders to test and the methodology used to conduct such stress tests. The Commission may review the selection of accounts and the methodology and require changes, as appropriate.

(ii) On at least a weekly basis, a derivatives clearing organization shall conduct stress tests with respect to each clearing member account, by house origin and by each customer origin, and each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner, under extreme but plausible market conditions. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to conduct such stress tests. The Commission may review the methodology and require changes, as appropriate.

(iii) The requirements in paragraphs (h)(3)(i) and (ii) of this section do not apply with respect to clearing member accounts that hold only fully-collateralized positions.

* * * * *

(5) *Clearing members' risk management policies and procedures.* (i) A derivatives clearing organization shall have rules that:

(A) Require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the derivatives clearing organization;

(B) Ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and

(C) Require its clearing members to make information and documents regarding their risk management policies, procedures, and practices

available to the Commission upon the Commission's request.

(ii) A derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the derivatives clearing organization, on a periodic basis, take appropriate action to address concerns identified in such reviews, and document such reviews and the basis for determining what action was appropriate to take.

* * * * *

(i) *Cross-margining.* (1) A derivatives clearing organization that seeks to implement a cross-margining program with one or more clearing organizations shall file rules for Commission approval pursuant to § 40.5 of this chapter that contain, at a minimum, the following information:

(i) Identification of the products that would be eligible for cross-margining, including product specifications or criteria that would be used to define eligible products;

(ii) Analysis of the risk characteristics of the eligible products;

(iii) Analysis of the liquidity of the respective markets for the eligible products, including the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such products in a timely manner and proposed means for addressing insufficient liquidity;

(iv) Analysis of the availability of reliable prices for each of the eligible products;

(v) Financial and operational requirements that would apply to clearing members participating in the program;

(vi) A description and analysis of the margin methodology that would be used to calculate initial margin requirements, including:

(A) Any margin reduction applied to correlated positions; and

(B) Information regarding the correlations between eligible products, including the stability of the relationship among the eligible products and the potential impact a change in the correlations could have on setting initial margin requirements;

(vii) Procedures the derivatives clearing organization would follow in the event of a clearing member default, including any loss-sharing arrangements;

(viii) A description of the arrangements for obtaining daily position data with respect to products in the account;

(ix) Whether funds to support the cross-margined positions will be

maintained together in one account or in separate accounts at each participating clearing organization; and
(x) A copy of the agreement between the clearing organizations participating in the cross-margining program.

(2) The Commission may request additional information in support of a rule submission filed under this paragraph (i), and may approve such rules in accordance with § 40.5 of this chapter.

■ 15. Revise § 39.15 to read as follows:

§ 39.15 Treatment of funds.

(a) *Required standards and procedures.* A derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers.

(b) *Customer funds*—(1) *Segregation.* A derivatives clearing organization shall comply with the applicable segregation requirements of section 4d of the Act and Commission regulations in this part, or any other applicable Commission regulation in this chapter or order requiring that customer funds and assets, including money, securities, and property, be segregated, set aside, or held in a separate account.

(2) *Commingling*—(i) *Cleared swaps account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) Identification of the products that would be commingled, including product specifications or the criteria that would be used to define eligible products;

(B) Analysis of the risk characteristics of the eligible products;

(C) Identification of whether the swaps would be executed bilaterally and/or executed on a designated contract market and/or a swap execution facility;

(D) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and,

as appropriate, proposed means for addressing insufficient liquidity;

(E) Analysis of availability of reliable prices for each of the eligible products;

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products;

(G) A description of the systems and procedures that would be used by the derivatives clearing organization to oversee such clearing members' risk management of any such commingled positions;

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the eligible products that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled eligible products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled eligible products in the account; and

(L) A description of the arrangements for obtaining daily position data with respect to eligible products in the account.

(ii) *Futures account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (b)(2)(i) or (ii) of this section, and may

approve such rules in accordance with § 40.5 of this chapter.

(c) *Holding of funds and assets.* A derivatives clearing organization shall hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk of loss or of delay in the access by the derivatives clearing organization to such funds and assets.

(d) *Transfer of customer positions.* A derivatives clearing organization shall have rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions, and related funds as necessary, from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and rebooking of the positions prior to the requested transfer, subject to the following conditions:

(1) The customer has instructed the carrying clearing member to make the transfer;

(2) The customer is not currently in default to the carrying clearing member;

(3) The transferred positions will have appropriate margin at the receiving clearing member;

(4) Any remaining positions will have appropriate margin at the carrying clearing member; and

(5) The receiving clearing member has consented to the transfer.

(e) *Permitted investments.* Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1 of this chapter, by a derivatives clearing organization shall comply with § 1.25 of this chapter.

■ 16. Revise § 39.16 to read as follows:

§ 39.16 Default rules and procedures.

(a) *General.* A derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its board of directors, its risk management committee, any other committee that a derivatives clearing organization may have that has responsibilities for default

management, and the derivatives clearing organization's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid products and less liquid products. A derivatives clearing organization shall conduct and document a test of its default management plan at least on an annual basis. The derivatives clearing organization shall include clearing members in a test of its default management plan at least on an annual basis.

(c) *Default procedures.* (1) A derivatives clearing organization shall have procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization. The derivatives clearing organization shall have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the derivatives clearing organization is considering. The default committee shall include clearing members and may include other participants to help the derivatives clearing organization efficiently manage the house or customer positions of the defaulting clearing member.

(2) A derivatives clearing organization shall have rules that set forth its default procedures, including:

- (i) The derivatives clearing organization's definition of a default;
- (ii) The actions that the derivatives clearing organization may take upon a default, which shall include immediate public notice of a declaration of default on its website and the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;
- (iii) Any obligations that the derivatives clearing organization imposes on its clearing members to participate in auctions, or to accept allocations, of the customer or house positions of the defaulting clearing member, *provided that*:

(A) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any auction, subject

to appropriate safeguards imposed by the derivatives clearing organization;

(B) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any allocations, subject to appropriate safeguards imposed by the derivatives clearing organization; and

(C) The derivatives clearing organization shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the derivatives clearing organization, as measured by the clearing initial margin requirement for those positions;

(iv) The sequence in which the funds and assets of the defaulting clearing member and its customers and the financial resources maintained by the derivatives clearing organization would be applied in the event of a default;

(v) A provision that the funds and assets of a defaulting clearing member's customers shall not be applied to cover losses with respect to a house default; and

(vi) A provision that the excess house funds and assets of a defaulting clearing member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.

(3) A derivatives clearing organization shall make its default rules publicly available as provided in § 39.21.

(d) *Insolvency of a clearing member.*

(1) A derivatives clearing organization shall have rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

(2) No later than upon receipt of such notice, a derivatives clearing organization shall review the continuing eligibility of the clearing member for clearing membership; and

(3) No later than upon receipt of such notice, a derivatives clearing organization shall take any appropriate action, in its discretion, with respect to such clearing member or its house or customer positions, including but not limited to liquidation or transfer of positions, suspension, or revocation of clearing membership.

■ 17. Revise § 39.17 to read as follows:

§ 39.17 Rule enforcement.

(a) *General.* A derivatives clearing organization shall:

(1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance (by itself and its clearing members) with the rules of the derivatives clearing organization and the resolution of disputes;

(2) Have the authority and ability to discipline, limit, suspend, or terminate the activities of a clearing member due to a violation by the clearing member of any rule of the derivatives clearing organization; and

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xvii).

(b) *Authority to enforce rules.* The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to an appropriate committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

■ 18. Revise § 39.19 to read as follows:

§ 39.19 Reporting.

(a) *General.* A derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(b) *Submission of reports—(1) General requirement.* A derivatives clearing organization shall submit the information required by this section to the Commission in a format and manner specified by the Commission.

(2) *Certification.* When making a submission pursuant to this section, an employee of the derivatives clearing organization must certify that he or she is duly authorized to make such a submission on behalf of the derivatives clearing organization.

(3) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph (c) the information specified as follows:

(1) *Daily reporting.* (i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the following information related to all positions other than fully-collateralized positions:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data for such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account using both a legal entity identifier and any internally-generated identifier, where applicable, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for:

(A) All futures positions, and options positions, as applicable;

(B) All swaps positions; and

(C) All securities positions that are:

(1) Held in a customer account subject to section 4d of the Act; or

(2) Subject to a cross-margining agreement.

(2) *Quarterly reporting.* A derivatives clearing organization shall provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the derivatives clearing organization's financial resources as required by § 39.11(f)(1).

(3) *Annual reporting.* A derivatives clearing organization shall provide to the Commission each year:

(i) The annual report of the chief compliance officer required by § 39.10; and

(ii) Audited year-end financial statements of the derivatives clearing organization as required by § 39.11(f)(2).

(iii) [Reserved]

(iv) The reports required by this paragraph (c)(3) shall be filed not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(4) *Event specific reporting*—(i) *Decrease in financial resources.* If there is a decrease of 25 percent or more in the total value of the financial resources available to satisfy the requirements under § 39.11(a)(1) or § 39.33(a), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the financial resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each financial resource reported in each of paragraphs (c)(4)(i)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(d) or § 39.33(b), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(D) A detailed explanation for the decrease.

(ii) *Decrease in liquidity resources.* If there is a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under § 39.11(e) or § 39.33(c), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the liquidity resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the liquidity resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each liquidity resource reported in each of paragraphs (c)(4)(ii)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(e) or § 39.33(c), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a liquidity resource; and

(D) A detailed explanation for the decrease.

(iii) *Decrease in ownership equity.* A derivatives clearing organization shall report to the Commission no later than two business days prior to an event which the derivatives clearing organization knows or reasonably should know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statement required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section; but in any event no later than two business days after such decrease in ownership equity for events that caused the decrease about which the derivatives clearing organization did not know and reasonably could not have known prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the derivatives clearing organization's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) A detailed explanation for the decrease or anticipated decrease in the balance.

(iv) *Six-month liquid asset requirement.* A derivatives clearing organization shall notify the Commission immediately when the derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(v) *Change in current assets.* A derivatives clearing organization shall notify the Commission no later than two business days after the derivatives clearing organization's current liabilities exceed its current assets. The notice shall include a balance sheet that reflects the derivatives clearing organization's current assets and current liabilities and an explanation as to the reason for the negative balance.

(vi) *Request to clearing member to reduce its positions.* A derivatives clearing organization shall notify the Commission immediately of a request by the derivatives clearing organization

to one of its clearing members to reduce the clearing member's positions. The notice shall include:

(A) The name of the clearing member;
(B) The time the clearing member was contacted;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, by which the derivatives clearing organization requested the reduction;

(D) All products that are the subject of the request; and

(E) The reason for the request.

(vii) *Determination to transfer or liquidate positions.* A derivatives clearing organization shall notify the Commission immediately of a determination by the derivatives clearing organization that a position it carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purpose of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;
(B) The time the clearing member was contacted;

(C) The products that are subject to the determination;

(D) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, that are subject to the determination; and

(E) The reason for the determination.

(viii) *Default of a clearing member.* A derivatives clearing organization shall notify the Commission immediately of the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;
(B) The products the clearing member defaulted upon;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(ix) *Change in ownership or corporate or organizational structure—(A) Reporting requirement.* A derivatives clearing organization shall report to the Commission any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent(s) that would:

(1) Result in at least a 10 percent change of ownership of the derivatives clearing organization;

(2) Create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization; or

(3) Result in the transfer of all or substantially all of the assets of the derivatives clearing organization to another legal entity.

(B) *Required information.* The report shall include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(C) *Time of report.* The report shall be submitted to the Commission no later than three months prior to the anticipated change, provided that the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than two business days following the effective date of the change.

(x) *Change in key personnel.* A derivatives clearing organization shall report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The report shall include, as applicable, the name and contact information of the person who will assume the duties of the position permanently or the person who will assume the duties on a temporary basis until a permanent replacement fills the position.

(xi) *Change in legal name.* A derivatives clearing organization shall report to the Commission no later than two business days following a legal name change of the derivatives clearing organization.

(xii) *Change in credit facility funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a credit facility funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a

change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a liquidity funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiv) *Change in settlement bank arrangements.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's arrangements with any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xv) *Settlement bank issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any material issues or concerns arise regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xvi) *Change in depositories for customer funds.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's arrangements with any depository of customer funds.

(xvii) *Sanctions against a clearing member.* A derivatives clearing organization shall provide notice to the Commission no later than two business days after the derivatives clearing organization imposes sanctions against a clearing member.

(xviii) *Financial condition and events.* A derivatives clearing organization shall provide to the Commission immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xix) *Financial statements material inadequacies.* A derivatives clearing organization shall provide notice to the Commission within 24 hours if the derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy in a financial statement, and within 48 hours after giving such notice provide a written report stating what steps have been and are being taken to correct the material inadequacy.

(xx) *Change in fiscal year.* A derivatives clearing organization shall provide to the Commission immediate notice of any change to the start and end dates of its fiscal year.

(xxi) *Change in independent accounting firm.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's independent public accounting firm. The report shall include the date of such change, the name and contact information of the new firm, and the reason for the change.

(xxii) *Major decision of the board of directors.* A derivatives clearing organization shall report to the Commission any major decision of the derivatives clearing organization's board of directors as required by § 39.24(a)(3)(i).

(xxiii) *System safeguards.* A derivatives clearing organization shall report to the Commission:

(A) Exceptional events as required by § 39.18(g); or

(B) Planned changes as required by § 39.18(h).

(xxiv) *Margin model issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that affects the DCO's ability to calculate or collect initial margin or variation margin.

(xxv) *Recovery and wind-down plans.* A derivatives clearing organization that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) shall submit its plans to the Commission no later than the date on which the derivatives clearing organization is required to have the plans. A derivatives clearing organization that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, may choose to submit its plans to the

Commission. A derivatives clearing organization that has submitted its recovery and wind-down plans to the Commission shall, upon making any revisions to the plans, submit the revised plans to the Commission along with a description of the changes and the reason for those changes.

(xxvi) *New product accepted for clearing.* A derivatives clearing organization shall provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing. The notice shall include:

(A) A brief description of the new product;

(B) The date on which the derivatives clearing organization intends to begin accepting the new product for clearing;

(C) A statement as to whether the new product will require the derivatives clearing organization to submit any rule changes pursuant to § 40.5 or § 40.6, and § 40.10, as applicable, of this chapter;

(D) A statement as to whether the derivatives clearing organization has informed, or intends to inform, its clearing members and/or the general public of the new product and, if written notice was given, a web address for or copy of such notice; and

(E) An explanation of any substantive opposing views received and how the derivatives clearing organization addressed such views or objections.

(5) *Requested reporting.* A derivatives clearing organization shall provide upon request by the Commission and within the time specified in the request:

(i) Any information related to its business as a clearing organization, including information relating to trade and clearing details.

(ii) A written demonstration, containing supporting data, information and documents, that the derivatives clearing organization is in compliance with one or more core principles and relevant provisions of this part.

■ 19. In § 39.20, revise paragraphs (a) introductory text and (b) to read as follows:

§ 39.20 Recordkeeping.

(a) *Requirement to maintain information.* A derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

* * * * *

(b) *Form and manner of maintaining information—(1) General.* The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31 of this chapter, for a period of not less

than 5 years, except as provided in paragraph (b)(2) of this section.

(2) *Exception for swap data.* A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

■ 20. Revise § 39.21 to read as follows:

§ 39.21 Public information.

(a) *General.* A derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of the objective in this paragraph (a), a derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information.* A derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure.* A derivatives clearing organization shall make the following information readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's website, unless otherwise permitted by the Commission:

(1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(2) Each clearing and other fee that the derivatives clearing organization charges its clearing members;

(3) Information concerning its margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted concurrently with submission of the report to the Commission under § 39.11(f)(1)(i)(A);

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the derivatives clearing organization, posted no later than the business day following the day to which the information pertains;

(6) The derivatives clearing organization's rulebook, including rules and procedures for defaults in accordance with § 39.16;

(7) A current list of all clearing members;

(8) A list of all swaps that the derivatives clearing organization will

accept for clearing that identifies which swaps on the list are required to be cleared, in accordance with § 50.3(a) of this chapter; and

(9) Any other information that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

■ 21. Revise § 39.22 to read as follows:

§ 39.22 Information sharing.

A derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

■ 22. Add § 39.24 to read as follows:

§ 39.24 Governance.

(a) *General.* (1) A derivatives clearing organization shall have governance arrangements that:

- (i) Are written;
- (ii) Are clear and transparent;
- (iii) Place a high priority on the safety and efficiency of the derivatives clearing organization; and
- (iv) Explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders.

(2) The board of directors shall make certain that the derivatives clearing organization's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders.

(3) To the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure:

- (i) Major decisions of the board of directors shall be clearly disclosed to clearing members, other relevant stakeholders, and to the Commission; and
- (ii) Major decisions of the board of directors having a broad market impact shall be clearly disclosed to the public.

(b) *Governance arrangement requirements.* A derivatives clearing organization shall have governance arrangements that:

- (1) Are clear and documented;
- (2) To an extent consistent with other statutory and regulatory requirements on confidentiality and disclosure, are disclosed, as appropriate, to the Commission, other relevant authorities, clearing members, customers of clearing members, owners of the derivatives clearing organization, and to the public;

(3) Describe the structure pursuant to which the board of directors, committees, and management operate;

(4) Include clear and direct lines of responsibility and accountability;

(5) Clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework;

(6) Clearly specify the roles and responsibilities of management;

(7) Describe procedures pursuant to which the board of directors oversees the chief risk officer, risk management committee, and material risk decisions;

(8) Provide risk management and internal control personnel with sufficient independence, authority, resources, and access to the board of directors so that the operations of the derivatives clearing organization are consistent with the risk management framework established by the board of directors;

(9) Assign responsibility and accountability for risk decisions, including in crises and emergencies; and

(10) Assign responsibility for implementing the:

(i) Default rules and procedures required by §§ 39.16 and 39.35, as applicable;

(ii) System safeguard rules and procedures required by §§ 39.18 and 39.34, as applicable; and

(iii) Recovery and wind-down plans required by § 39.39, as applicable.

(c) *Fitness standards.* (1) A derivatives clearing organization shall establish and enforce appropriate fitness standards for:

- (i) Directors;
- (ii) Members of any disciplinary committee;
- (iii) Members of the derivatives clearing organization;
- (iv) Any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and
- (v) Any other party affiliated with any individual or entity described in this paragraph.

(2) A derivatives clearing organization shall maintain policies to make certain that:

(i) The board of directors consists of suitable individuals having appropriate skills and incentives;

(ii) The performance of the board of directors and the performance of individual directors is reviewed on a regular basis; and

(iii) Managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

■ 23. Add § 39.25 to read as follows:

§ 39.25 Conflicts of interest.

A derivatives clearing organization shall:

(a) Establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization;

(b) Establish a process for resolving such conflicts of interest; and

(c) Describe procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

■ 24. Add § 39.26 to read as follows:

§ 39.26 Composition of governing boards.

A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof. For purposes of this section, "market participant" means any clearing member of the derivatives clearing organization or customer of a clearing member, or an employee, officer, or director of such an entity.

■ 25. In § 39.27, revise paragraph (c) to read as follows:

§ 39.27 Legal risk considerations.

* * * * *

(c) *Conflict of laws.* If a derivatives clearing organization provides clearing services outside the United States:

(1) The derivatives clearing organization shall identify and address any material conflict of law issues. The derivatives clearing organization's contractual agreements shall specify a choice of law.

(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.

(3) The derivatives clearing organization shall ensure on an ongoing basis that the memorandum required in paragraph (b) of Exhibit R to appendix A to this part is accurate and up to date and shall submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

§ 39.32 [Removed and Reserved]

■ 26. Remove and reserve § 39.32.

■ 27. In § 39.33, revise paragraphs (a)(1) and (c)(1)(i), and add paragraph (d)(5) to read as follows:

§ 39.33 Financial resources requirements for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(1) Notwithstanding the requirements of § 39.11(a)(1), each systemically important derivatives clearing organization and subpart C derivatives clearing organization that, in either case, is systemically important in multiple jurisdictions or is involved in activities with a more complex risk profile shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure to the derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding the provisions of § 39.11(e)(1)(ii), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain eligible liquidity resources, in all relevant currencies, that, at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the systemically important derivatives clearing organization or subpart C derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(d) * * *

(5) A systemically important derivatives clearing organization with access to accounts and services at a Federal Reserve Bank, pursuant to section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), shall use such accounts and services where practical.

* * * * *

■ 28. In § 39.36, revise paragraphs (a)(5)(ii), (a)(6), (b)(2)(ii), (d) and (e) to read as follows:

§ 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(5) * * *

(ii) Using the results to assess the adequacy of, and to adjust, its total amount of financial resources; and

(6) Use the results of stress tests to support compliance with the minimum financial resources requirement set forth in § 39.11(a)(1) or § 39.33(a), as applicable.

(b) * * *

(2) * * *

(ii) Testing of the ability of the models or model components to react appropriately using actual or hypothetical datasets and assessing the impact of different model parameter settings.

* * * * *

(d) *Margin model assessment.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct, on at least an annual basis (or more frequently if there are material relevant market developments), an assessment of the theoretical and empirical properties of its margin model for all products it clears.

(e) *Independent validation.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall perform, on an annual basis, a full validation of its financial risk management model and its liquidity risk management model.

* * * * *

■ 29. In § 39.37, revise paragraphs (b) and (c) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(b)(1) Review and update its responses disclosed as required by paragraph (a) of this section at least every two years and following material

changes to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates. A material change to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses; and

(2) Provide notice to the Commission of updates to its responses required by paragraph (b)(1) of this section following material changes no later than ten business days after the updates are made. Such notice shall be accompanied by a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses;

(c) Disclose, publicly and to the Commission, relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

* * * * *

■ 30. In § 39.39, revise paragraph (a)(2) to read as follows:

§ 39.39 Recovery and wind-down for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(2) *Wind-down* means the actions of a systemically important derivatives clearing organization or subpart C derivatives clearing organization to effect the permanent cessation or sale or transfer of one or more services.

* * * * *

■ 31. Revise appendix A to part 39 to read as follows:

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

BILLING CODE 6351-01-P

OMB No. 3038-0076

COMMODITY FUTURES TRADING COMMISSION

FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or an amendment to an application in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration will be effective unless the Commission, by order, grants such registration.
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
4. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.
5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for registration as a derivatives clearing

organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

6. As provided in 17 CFR 39.3(a)(5), except in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.
2. Applicants, when filing this Form DCO for purposes of amending a pending application, must re-file an entire Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment to a pending application represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed with the Commission in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION**FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION****COVER SHEET**

Exact name of Applicant as specified in charter

Address of principal executive offices

- ☐ If this is an **APPLICATION** for registration, complete in full and check here.
- ☐ If this is an **AMENDMENT** to a pending application, list below all items that are being amended and check here.

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

3. Additional contact information:

Website URL

Main Phone Number

4. List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office**Address**

BUSINESS ORGANIZATION

5. If Applicant is a successor to a previously registered derivatives clearing organization, please complete the following:

- a. Date of succession _____
- b. Full name and address of predecessor registrant

Name

Street Address

City

State

Country

Zip Code

6. Applicant is a:

- ☐ Corporation
- ☐ Partnership (specify whether general or limited)
- ☐ Limited Liability Company
- ☐ Other form of organization (specify) _____

7. Date of formation: _____

8. Jurisdiction of organization: _____

List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

9. FEIN or other Tax ID#: _____

10. Fiscal Year End: _____

ADDITIONAL CONTACT INFORMATION

11. Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

- a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- e. The individual responsible for serving as the chief legal officer of the Applicant

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

12. Outside Service Providers: Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

- a. Certified Public Accountant

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- b. Legal Counsel

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- c. Records Storage or Management

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- d. Business Continuity/Disaster Recovery

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

- e. Professional consultants providing services related to this application

- e. Professional consultants providing services related to this application

Name and Title

Office Phone Number

Mobile Phone Number

Mailing address

E-mail Address

13. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

Print Name and Title

Street Address

City

State

Country

Zip Code

SIGNATURE/REPRESENTATION

14. Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20____. Applicant and the undersigned each represent hereby that, to the best of their knowledge, all information contained herein is true, current and complete in all material respects. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

Name of Applicant

By: _____

Manual Signature of Duly Authorized Person

Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION**FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION****EXHIBIT INSTRUCTIONS**

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization pursuant to section 5b of the Act and the Commission's regulations thereunder.
2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.
3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.
4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.
5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must mark such Exhibit with a prominent stamp, typed legend, or other suitable form of notice on each page or portion of each page stating "Confidential Treatment Requested by [Applicant]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [Applicant]" should be provided for each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter shall be individually marked with an identifying number and code so that they are separately identifiable. Applicant must also file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

DESCRIPTION OF EXHIBITS

EXHIBIT A — GENERAL INFORMATION/COMPLIANCE

- Attach as **Exhibit A-1**, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.
- Attach as **Exhibit A-2**, a copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to any separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.
- Attach as **Exhibit A-3**, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration), and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.*, clearing for a designated contract market; clearing for a swap execution facility; clearing bilaterally executed products).
- Attach as **Exhibit A-4**, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.
- Attach as **Exhibit A-5**, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of **Exhibit A-5** the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.
- Attach as **Exhibit A-6**, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees, as applicable, or persons performing functions similar to any of the foregoing, indicating for each:
 - a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);
 - b. Dates of commencement and, if appropriate, termination of present term of office or position;
 - c. Length of time each such person has held the same office or position;
 - d. Brief description of the business experience of each person over the last ten years;
 - e. Any other current business affiliations in the financial services industry;
 - f. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;
 - g. A certification for each such person that the individual would not be disqualified under section 8a(2) of the Act or § 1.63; and
 - h. With respect to a director, indicate whether such director is an independent director, and whether such director is a market participant, and the basis for such a determination as to the director's status.

If another entity will operate or control the day-to-day business operations of the Applicant, attach for such entity all of the items indicated in **Exhibit A-6**.

- Attach as **Exhibit A-7**, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (ii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.*, country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (iii) the address for legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.
- Attach as **Exhibit A-8**, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.
- Attach as **Exhibit A-9**, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.
- If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as **Exhibit A-10** all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff of the outside service provider who will provide the services (specifying (i) in which department or unit of the outside service provider they are employed, (ii) title, and (iii) if known, level of expertise); and (3) the Core Principles addressed by such arrangement. Each submitted agreement must include all attachments cited therein. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.
- Attach as **Exhibit A-11**, documentation that demonstrates compliance with the Chief Compliance Officer (“CCO”) requirements set forth in § 39.10(c), including but not limited to:
 - a. Evidence of the designation of an individual to serve as Applicant’s CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;
 - b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under section 8a(2) or 8a(3) of the Act;
 - c. Identification of to whom the CCO reports (*i.e.*, the senior officer of the derivatives clearing organization, the senior officer responsible for the derivative clearing organization’s clearing activities, or the Board of Directors of the derivatives clearing organization);
 - d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;
 - e. A job description setting forth the CCO’s duties;
 - f. Procedures for the remediation of noncompliance issues; and

- g. A copy of Applicant's written compliance policies and procedures (including a code of ethics and conflict of interest policy).
- Attach as **Exhibit A-12**, a description of Applicant's enterprise risk management program, and how it complies with the requirements set forth in § 39.10(d).

EXHIBIT B — FINANCIAL RESOURCES

- Attach as **Exhibit B**, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11 of the Commission's regulations, including but not limited to:
 - a. General – Provide as **Exhibit B-1**:
 - (1) The most recent year-end audited financial statements of Applicant calculated in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and an independent auditor's report issued by a certified public accountant, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. If Applicant does not have its own year-end audited financial statements, it may submit the audited financial statements of its direct parent company, dated as of the end of the direct parent company's last fiscal year-end prior to the date of filing the Form DCO. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit its own year-end audited financial statements, as required by § 39.11(f)(2)(i), and the cost of such audit must be included in Applicant's calculation of its total projected operating costs in Exhibit B-3, as described in paragraph c(5) below;
 - (2) If Applicant is unable to submit a copy of its own audited financial statements or the audited financial statements of its direct parent company, as required by paragraph a(1) above, Applicant must provide its year-end financial statements calculated in accordance with U.S. GAAP, including the balance sheet, income statement, statement of cash flows, and notes to the financial statements, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. These year-end financial statements must be accompanied by an independent accountant's review report issued by a certified public accountant;
 - (3) If the audited or reviewed financial statements submitted in accordance with either paragraph a(1) or paragraph a(2) above are not dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO, Applicant must also provide a set of Applicant's quarterly unaudited financial statements, dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO;
 - (4) If Applicant is incorporated or organized under the laws of any foreign country, it may submit the financial statements described above prepared in accordance with either U.S. GAAP or the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit financial statements prepared in accordance with U.S. GAAP or IFRS, as required by § 39.11(f)(1) and (f)(2);
 - (5) If Applicant is a start-up or will commence operations after it is registered as a derivatives clearing organization, Applicant must submit a set of pro-forma financial statements, including the balance sheet, income statement, and statement of cash flows, dated as of the first month-end after Applicant's

expected start date. The set of pro-forma statements must include a narrative description of how the estimates were determined;

- (6) A narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a registered derivatives clearing organization; and
- (7) Applicant must complete the form that is used by registered derivatives clearing organizations for quarterly reports under § 39.11(f)(1), as of the date of the most recent financial statements provided in Exhibit B-1. If Applicant is a start-up, Applicant must complete the form using estimated figures and must provide a narrative description of how the estimates were determined. The Division of Clearing and Risk will provide the current form to Applicant, upon request.

b. Default Resources – Provide as **Exhibit B-2**:

- (1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure and explain the basis for such estimate;
- (2) Evidence of unencumbered assets sufficient to satisfy § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(1)(v), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(1)(iii), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(1)(i) and/or (v), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;
- (3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);
- (4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1), as of the date of the most recent financial statements provided in Exhibit B-1;
- (5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and
- (6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. Operating Resources – Provide as **Exhibit B-3**:

- (1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1;
- (2) Evidence of assets sufficient to satisfy the amount required under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets, in the name of Applicant, for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(2), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;
- (3) A narrative statement demonstrating the adequacy of Applicant's physical infrastructure to carry out business operations, which includes a principal executive office (separate from any personal dwelling) with a street address (not merely a post office box number). For its principal executive office and other facilities Applicant plans to occupy in carrying out its functions as a derivatives clearing organization, a description of the space (*e.g.*, location and square footage), use of the space (*e.g.*, executive office, data center), and the basis for Applicant's right to occupy the space (*e.g.*, lease, agreement with parent company to share leased space);
- (4) A narrative statement demonstrating the adequacy of the technological systems necessary to carry out Applicant's business operations, including a description of Applicant's information technology and telecommunications systems and a timetable for full operability;
- (5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation as a derivatives clearing organization, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;
- (6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(c)(2), as of the date of the most recent financial statements provided in Exhibit B-1;
- (7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and
- (8) A demonstration of how financial information for operating resources will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. Human Resources – Provide as **Exhibit B-4**:

- (1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.
- (2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks, services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and
- (3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

EXHIBIT C — PARTICIPANT AND PRODUCT ELIGIBILITY

- Attach as **Exhibit C**, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. Participant Eligibility – Provide as **Exhibit C-1**, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management, and operational capacity. The explanation also must include:

- (1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;
- (2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;
- (3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;
- (4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;
- (5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;
- (6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

- (7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;
 - (8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and
 - (9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.
- b. **Product Eligibility** – Provide as **Exhibit C-2**, an explanation of the criteria used to determine the eligibility of products submitted for clearing, including:
- (1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.*, designated contract market, swap execution facility, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For bilaterally executed agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the related market and its interest in having the particular bilaterally executed agreement, contract, or transaction cleared;
 - (2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;
 - (3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;
 - (4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;
 - (5) A forecast of expected volume and open interest at the outset of clearing operations as a derivatives clearing organization, after six months, and after one year of operation as a derivatives clearing organization; and
 - (6) The mechanics of clearing each contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

EXHIBIT D — RISK MANAGEMENT

- Attach as **Exhibit D**, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:
 - a. **Risk Management Framework** – Provide as **Exhibit D-1**, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

- b. Measuring Risk – Provide as **Exhibit D-2**, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:
- (1) A description of the risk-based margin calculation methodology;
 - (2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;
 - (3) An explanation as to whether other margining methodologies were considered and, if so, why they were not chosen;
 - (4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;
 - (5) A description of the data sources for inputs used in the methodology, *e.g.*, historical price data reflecting market volatility over various periods of time;
 - (6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;
 - (7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;
 - (8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;
 - (9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;
 - (10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;
 - (11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and
 - (12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.*, the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).
- c. Limiting Risk – Provide as **Exhibit D-3**, a narrative discussion addressing the specifics of Applicant's clearing activities, including:
- (1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

- (2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with risk limits; and how it will use large trader information;
- (3) How Applicant will determine variation margin levels and outstanding initial margin due;
- (4) How Applicant will identify unusually large pays on a proactive basis before they occur;
- (5) Whether and how Applicant will compare price moves and position information to historical patterns and to the financial information collected from its clearing members; and how it will identify unusually large pays on a daily basis;
- (6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures. If Applicant is currently clearing products for which it is seeking registration as a derivatives clearing organization, provide back testing results for actual portfolios containing each such product, which demonstrate margin coverage at least at the 99 percent confidence level over the previous 252 trading days;
- (7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstances that might require immediate action by the Applicant;
- (8) How Applicant will monitor risk outside of its business hours;
- (9) How Applicant will review its clearing members' risk management practices;
- (10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);
- (11) Plans for handling "extreme market volatility" and how Applicant defines that term;
- (12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to bilaterally executed products;
- (13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;
- (14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;
- (15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and
- (16) If Applicant intends to clear credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, how Applicant will manage the unique risks associated with clearing

these products, including but not limited to liquidity risk, currency risk, seasonable risk, compounding risk, jump-to-default risk or similar jump risk.

- d. Existence of collateral (funds and assets) to apply to losses resulting from realized risk – Provide as **Exhibit D-4**:
- (1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;
 - (2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;
 - (3) A description of how Applicant will value open positions and collateral assets;
 - (4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits or charges on certain kinds of assets, including how often any such haircuts and concentration limits or charges are reviewed;
 - (5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and
 - (6) If options are involved, a full explanation of how Applicant will manage the associated risk through the use of collateral including, if applicable, a discussion of Applicant's option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

EXHIBIT E — SETTLEMENT PROCEDURES

- Attach as **Exhibit E**, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:
 - a. Settlement – Provide as **Exhibit E-1**, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:
 - (1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);
 - (2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;
 - (3) A description of how contracts will be marked to market on at least a daily basis;
 - (4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on

bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

- (5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;
- (6) A description of the criteria and review process used by Applicant when selecting settlement banks to be used by the Applicant or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such settlement banks;
- (7) Procedures for monitoring the continued appropriateness of each approved settlement bank, including a description of how Applicant monitors the full range and concentration of its exposures to each settlement bank;
- (8) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);
- (9) A timetable showing the flow of funds associated with the settlement of financial obligations with respect to all cleared products for a 24-hour period or such other settlement timeframe specified with respect to a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART

[Specify U.S. Dollar or other currency as applicable]

TRADE DATE = T [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED
T: ____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily initial margin (IM) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily IM and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from clearing members to DCO.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday IM and SVOP amounts to banks and clearing members.
T: By ____ pm	Banks commit to pay intraday IM and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from clearing members to DCO.

T: Approx. ____ pm

Banks pay intraday IM and SVOP amounts from DCO to clearing members.

- (10) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;
 - (11) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;
 - (12) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and
 - (13) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.
- b. Recordkeeping – Provide as **Exhibit E-2**, a full description of the following:
 - (1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and
 - (2) How such information will be recorded, maintained, and accessed.
 - c. Relationships with other clearing organizations – Provide as **Exhibit E-3**, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions, including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.*, any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

EXHIBIT F — TREATMENT OF FUNDS

- Attach as **Exhibit F**, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:
 - a. Safe custody – Provide as **Exhibit F-1**, documents that demonstrate:
 - (1) How Applicant will ensure the safekeeping of funds and assets belonging to clearing members and their customers in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and assets;
 - (2) The depositories that will hold such funds and assets and any written agreements between or among such depositories, Applicant, or its clearing members regarding the legal status of the funds and assets and the specific conditions or prerequisites for movement of the funds and assets; and
 - (3) How Applicant will limit the concentration of risk in depositories where such funds and assets are deposited.
 - b. Segregation of customer and proprietary funds and assets – Provide as **Exhibit F-2**, documents that demonstrate:

- (1) The appropriate segregation of customer funds and assets and associated acknowledgment documentation, including the acknowledgment letters required under §§ 1.20 and/or 22.5, as applicable, for each bank or trust company that Applicant will use for the deposit of customer funds and assets; and
 - (2) Requirements or restrictions regarding commingling customer funds and assets with proprietary funds and assets, obligating customer funds and assets for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds and assets which are subject to cross-margin or similar agreements, and any other aspects of the segregation of customer funds and assets.
- c. Investment standards – Provide as **Exhibit F-3**, documents that demonstrate:
- (1) Policies and procedures to ensure that funds and assets belonging to clearing members and their customers would only be invested in instruments with minimal credit, market, and liquidity risks, and that any investment of customer funds or assets would comply with the requirements of § 1.25; and
 - (2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

EXHIBIT G — DEFAULT RULES AND PROCEDURES

- Attach as **Exhibit G**, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:
 - a. Default Management Plan – Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.
 - b. Definition of default – Applicant must describe or otherwise document:
 - (1) The events (activities, lapses, or situations) that will constitute a clearing member default;
 - (2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and
 - (3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.
 - c. Remedial action – Applicant must describe or otherwise document:
 - (1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member (including an explanation of the movement of positions and collateral on deposit); and

- (2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.
- d. Process to address shortfalls – Applicant must describe or otherwise document:
 - (1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;
 - (2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.*, the "waterfall"); and
 - (3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.
- e. Use of cross-margin programs – Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.
- f. Customer priority rule – Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions.

EXHIBIT H — RULE ENFORCEMENT

- Attach as **Exhibit H**, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:
 - a. Surveillance – Describe or otherwise document arrangements and resources for the effective monitoring of compliance with Applicant's rules.
 - b. Enforcement – Describe or otherwise document:
 - (1) Arrangements and resources for enforcing compliance with Applicant's rules and addressing instances of non-compliance, including disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges; and
 - (2) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure.
 - c. Dispute resolution – Describe or otherwise document arrangements and resources for resolution of disputes between clearing members and Applicant.

EXHIBIT I — SYSTEM SAFEGUARDS

- Attach as **Exhibit I**, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:
 - a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure daily processing, clearing, and settlement of transactions and address each of the following categories of risk:
 - (1) Information security;

- (2) Business continuity-disaster recovery planning and resources;
 - (3) Capacity and performance planning;
 - (4) Systems operations;
 - (5) Systems development and quality assurance; and
 - (6) Physical security and environmental controls.
- b. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:
- (1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and, settlement;
 - (2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;
 - (3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing, and settlement no later than the next business day following a disruption; and
 - (4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.
- c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;
- d. Identification of the persons conducting the testing, including information as to their qualifications and independence;
- e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with its clearing members and providers of essential services such as telecommunications, power, and water; and
- f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

EXHIBIT J — REPORTING

- Attach as **Exhibit J**, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations, including but not limited to:
 - a. A description of how Applicant will make available to Commission staff all the information Commission staff needs in order to carry out effective oversight, *e.g.*,

the internal staff procedures Applicant will follow to provide such information. If the laws or regulations of any foreign country in which Applicant is incorporated or organized require any approval(s) by a foreign regulatory authority with respect to the provision of any information to the Commission, Applicant must submit evidence that such approval(s) have been obtained.

- b. A representation that the Applicant will submit the information required to satisfy the daily, quarterly, annual, event-specific, and requested reporting requirements specified in § 39.19(c) of the Commission's regulations, in the format and manner and within the time specified by the Commission.

EXHIBIT K — RECORDKEEPING

- Attach as **Exhibit K**, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations, including but not limited to:
 - a. Applicant's recordkeeping and record retention policies and procedures;
 - b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;
 - c. The manner in which records relating to swaps and swap data are gathered and maintained; and
 - d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:
 - (1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;
 - (2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;
 - (3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;
 - (4) How long books and records will be readily available and how they will be made readily available during the first two years; and
 - e. How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

EXHIBIT L — PUBLIC INFORMATION

- Attach as **Exhibit L**, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations, including but not limited to:
 - a. Applicant's procedures for making its rulebook, a list of all current clearing members, and all other information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's website;
 - b. The URLs for Applicant's website for each item listed in § 39.21(c)(1) through (c)(9).
 - c. Any other information routinely made available to the public by Applicant;

- d. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and
- e. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options, and obligations of Applicant preceding and upon a clearing member's default.

EXHIBIT M — INFORMATION SHARING

- Attach as **Exhibit M**, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:
 - a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;
 - b. A description of the types of information expected to be shared and how that information will be shared;
 - c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and
 - d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

EXHIBIT N — ANTITRUST CONSIDERATIONS

- Attach as **Exhibit N**, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

EXHIBIT O — GOVERNANCE

- Attach as **Exhibit O**, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:
 - a. A copy of:
 - (1) The charter (or mission statement) of Applicant (if not attached as **Exhibit A-8**);
 - (2) The charter (or mission statement) of Applicant's Board of Directors, each committee composed entirely or in part of members of the Board of Directors (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as **Exhibit A-8**);
 - (3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as **Exhibit A-8**); and a description of the manner in which the Applicant will ensure that such entity's officers, directors, employees, and agents and such entity's books and records

shall be subject to the authority of the Commission pursuant to the Act and the Commission's regulations thereunder; and

- (4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.
- b. A description of how Applicant's governance arrangements place a high priority on Applicant's safety and efficiency and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders;
- c. A description of how the Board of Directors makes certain that Applicant's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders;
- d. A description of how major decisions of the Board of Directors are clearly disclosed to clearing members and other relevant stakeholders, and will be disclosed to the Commission, and how major decisions of the Board of Directors having a broad market impact are clearly disclosed to the public, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;
- e. A description of how Applicant's governance arrangements are disclosed, as appropriate, to clearing members, customers of clearing members, Applicant's owners, and the public, and will be disclosed to the Commission, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;
- f. A description of how Applicant's governance arrangements: (1) describe the structure pursuant to which the Board of Directors, committees, and management operate; (2) include clear and direct lines of responsibility and accountability; (3) clearly specify the roles and responsibilities of the Board of Directors and its committees, including the establishment of a clear and documented risk management framework; and (4) clearly specify the roles and responsibilities of management;
- g. A description of the procedures pursuant to which Applicant's Board of Directors oversees Applicant's chief risk officer, risk management committee, and material risk decisions;
- h. A description of how Applicant provides risk management, internal control, and internal audit personnel with sufficient independence, authority, resources, and access to the Board of Directors so that the operations of Applicant are consistent with its risk management framework;
- i. A description of how Applicant's governance arrangements assign responsibility and accountability for risk decisions, including in crises and emergencies, and assign responsibility for implementing default rules and procedures, system safeguard rules and procedures, and as applicable, recovery and wind-down plans;
- j. A description of the fitness standards applicable to members of the Board of Directors, members of any disciplinary committee, clearing members, any other individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, including a description or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards and how Applicant will enforce compliance with such standards; and

- k. A description of how Applicant will make certain that: (1) its Board of Directors consists of suitable individuals having appropriate skills and incentives; (2) the performance of the Board of Directors and individual directors are reviewed on a regular basis; and (3) managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

EXHIBIT P — CONFLICTS OF INTEREST

- Attach as **Exhibit P**, documents that demonstrate compliance with the conflicts of interest requirements set forth in § 39.25 of the Commission's regulations, including but not limited to:
 - a. A description of Applicant's rules to minimize conflicts of interest in its decision-making process and how it enforces those rules;
 - b. A description of Applicant's process for resolving such conflicts of interest or for making fair and non-biased decisions in the event of a conflict of interest; and
 - c. A description of Applicant's procedures for identifying, addressing, and managing conflicts of interest involving members of its Board of Directors.

EXHIBIT Q — COMPOSITION OF GOVERNING BOARDS

- Attach as **Exhibit Q**, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number of market participants.

EXHIBIT R — LEGAL RISK CONSIDERATIONS

- Attach as **Exhibit R**, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:
 - a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:
 - (1) Novation;
 - (2) Netting arrangements;
 - (3) Applicant's interest in collateral (including margin);
 - (4) The steps that Applicant can take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;
 - (5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when Applicant's accounts are debited and credited); and
 - (6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.
 - b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must provide a memorandum from local counsel analyzing insolvency issues in the foreign jurisdiction where Applicant is based, which should describe or otherwise document:

- (1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");
- (2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;
- (3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;
- (4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);
- (5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.*, the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and
- (6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.

COMMODITY FUTURES TRADING COMMISSION**SUBPART C ELECTION FORM**

GENERAL INSTRUCTIONS: Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).

DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term "Applicant" shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission's regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission's regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the "Subpart C Election Form").
2. Any derivatives clearing organization wishing to request an extension of up to one year to comply with any of the provisions of 17 CFR 39.34, 17 CFR 39.35 or 17 CFR 39.39, pursuant to 17 CFR 39.34(d) or 17 CFR 39.39(f) must do so prior to filing this Subpart C Election Form. Such requests shall become part of this Subpart C Election Form.
3. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
4. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
5. All applicable items must be answered in full.
6. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.
7. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of

subpart C of part 39 of the Commission's regulations. The Commission may determine that additional information is required in order to process such election.

8. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.
9. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.
2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

WHERE TO FILE

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.
2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION**SUBPART C ELECTION FORM****ELECTION AND CERTIFICATIONS**

Exact Name of the Derivatives Clearing Organization
(as set forth in its charter, if an Applicant,
or as set forth in its most recent order of registration, if registered with the Commission)

- ☐ Check here and complete sections 1 and 3 below, if the organization is an Applicant.
- ☐ Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.
1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations:

- a. The derivatives clearing organization will be in compliance with such regulations as of the date set forth in the notice thereof provided by the Commission pursuant to 17 CFR 39.31(c)(2), except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);
- b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and
- c. The derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

Name of Derivatives Clearing Organization

By: _____

Manual Signature of Duly Authorized Person

Print Name and Title of Signatory

2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

_____ ("Effective Date")
[insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that:

- a. As of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);
- b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and
- c. The derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

Name of Derivatives Clearing Organization

By: _____
Manual Signature of Duly Authorized Person

Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20____. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

Name of Derivatives Clearing Organization

By: _____
Manual Signature of Duly Authorized Person

Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION**PART 39, SUBPART C ELECTION FORM****DISCLOSURES AND EXHIBITS**

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

DISCLOSURES:

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

EXHIBITS:**EXHIBIT INSTRUCTIONS:**

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.
2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A – COMPLIANCE WITH SUBPART C

Attach, as **Exhibit A**, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission's regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization's policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B – FINANCIAL RESOURCES

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission's regulations, including but not limited to:

- a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization's obligations under § 39.33(a) or § 39.11(a)(1).
- b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).
- c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization's liquidity providers meet the requirements as set forth in § 39.33(d).
- d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

EXHIBIT C – SYSTEM SAFEGUARDS

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission's regulations, including but not limited to:

- a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

- b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).
- c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission's regulations, including but not limited to:

- a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member's obligations to the derivatives clearing organization.
- b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

EXHIBIT E – RISK MANAGEMENT

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission's regulations, including but not limited to:

- a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);
- b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);
- c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);
- d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;
- e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk

management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);

- f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization's own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization's own funds and assets to the same extent as if such funds and assets belonged to clearing members; and
- g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

EXHIBIT F – RECOVERY AND WIND-DOWN

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and wind-down requirements set forth in § 39.39 of the Commission's regulations, including but not limited to:

- a. Recovery and wind-down plans – Attach as **Exhibit F-1**, a demonstration that the derivatives clearing organization has separate plans that set forth in detail: recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls, and recovery or orderly wind-down, necessitated by general business risk, operational risk, or any other risk that threatens the derivatives clearing organization's viability as a going concern. The demonstration shall also include how the plans comply with the requirements of § 39.39(c).
- b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).
- c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).

BILLING CODE 6351-01-C

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 33. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 34. In § 140.94, revise paragraph (c) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) The Commission hereby delegates, until such time as the Commission orders otherwise, the following function to the Director of the Division of Clearing and Risk and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time:

(1) The authority to review applications for registration as a derivatives clearing organization filed with the Commission under § 39.3(a)(1) of this chapter, to determine that an application is materially complete pursuant to § 39.3(a)(2) of this chapter, to request additional information in support of an application pursuant to § 39.3(a)(3) of this chapter, to extend the review period for an application pursuant to § 39.3(a)(6) of this chapter, to stay the running of the 180-day review period if an application is incomplete pursuant to § 39.3(b)(1) of this chapter, to review requests for amendments to orders of registration filed with the Commission under § 39.3(d)(1) of this chapter, to request additional information in support of a request for an amendment to an order of registration pursuant to § 39.3(d)(2) of this chapter, and to request additional information in support of a rule submission pursuant to § 39.3(g)(3) of this chapter;

(2) All functions reserved to the Commission in § 39.4(a) of this chapter;

(3) All functions reserved to the Commission in § 39.5(b)(2), (b)(3)(ix), (c)(1), and (d)(3) of this chapter;

(4) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(5) All functions reserved to the Commission in § 39.11(b)(1)(v), (b)(2)(ii), (c)(1) and (3), and (f)(1), and (2) of this chapter;

(6) All functions reserved to the Commission in § 39.12(a)(5)(iii) of this chapter;

(7) All functions reserved to the Commission in § 39.13(g)(8)(ii),

(h)(1)(i)(C), (h)(1)(ii), (h)(3)(i) and (ii), and (h)(5)(i)(C) of this chapter;

(8) The authority to request additional information in support of a rule submission under §§ 39.13(i)(2) and 39.15(b)(2)(iii) of this chapter;

(9) All functions reserved to the Commission in § 39.19(c)(2), (c)(3)(iv), and (c)(5) of this chapter;

(10) All functions reserved to the Commission in § 39.20(a)(5) of this chapter;

(11) All functions reserved to the Commission in § 39.21(c) of this chapter;

(12) All functions reserved to the Commission in § 39.31 of this chapter; and

(13) The authority to approve the requests described in §§ 39.34(d) and 39.39(f) of this chapter.

* * * * *

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

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Derivatives Clearing Organization General Provisions and Core Principles—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

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

Swaps clearing is among the most sweeping and significant of the swaps reforms adopted by the Dodd-Frank Act. By any measure, the CFTC's swaps clearing regime has been robust and highly successful.

In 2011 and 2013, the Commission adopted regulations in part 39 to implement the Dodd-Frank Act's Core Principles for Derivatives Clearing Organizations (DCOs). Since the adoption of these rules, Commission staff has worked with DCOs regarding questions concerning the interpretation and implementation of the regulations, and issued related staff relief or guidance.

As part of Project KISS, the Commission is proposing to revise or delete certain provisions in part 39. These revisions will improve the clarity of the text, codify staff relief and guidance, and simplify processes for registration or reporting. There are also a few new requirements with respect to default procedures and reporting in response to more recent events, such as the launch of bitcoin futures contracts and the Nasdaq Clearing default. For these reasons, I support this proposal.

Appendix 3—Statement of Commissioner Dan M. Berkovitz

Introduction

I support issuing for public comment the notice of proposed rulemaking ("NPRM") to amend certain provisions of part 39 of the Commission's regulations governing derivatives clearing organizations ("DCOs"). Part 39 generally covers registration and regulation of DCOs that centrally clear futures, options, and swaps regulated by the Commission.

The NPRM includes a number of beneficial provisions. I commend the staff of the Division of Clearing and Risk for this important effort to clarify and clean up some issues in the rules and staff guidance that have accumulated since part 39 was substantively amended in 2011 and 2013. The NPRM also proposes several changes to the regulations that merit scrutiny as outlined below. I particularly look forward to comments on those provisions to help guide the Commission's deliberations on the proposed amendments.

Background

Central clearing of futures positions has been a fundamental risk mitigation measure for derivatives market participants in the United States for well over a hundred years. In more recent times, as futures and swap trading has grown dramatically,¹ central clearing of derivatives including swaps has become a critical element in risk management of the financial system as a whole. In response to the 2008 financial crisis, world leaders at the G20 summit in Pittsburgh established central clearing for derivatives as a core objective in mitigating systemic risk.² DCOs are a critical component of the clearing infrastructure, and effective clearinghouse registration and regulation is key to facilitating efficient, sound derivatives markets and preventing another financial crisis.

As described in the NPRM, the Commission adopted regulations in 2011 and

¹ A CFTC study published in 1998 noted that an estimated 272 million futures and options contracts were traded globally in 1986, while recent Futures Industry Association data indicates that 30.28 billion futures and options contracts were traded globally in 2018. See CFTC, Division of Economic Analysis, The Global Competitiveness of U.S. Futures Markets Revisited (November 1999); available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/plstudy_53_cftc.pdf; FIA Releases Annual Trading Statistics showing Record [Exchange Traded Derivatives] Volume in 2018; available at <https://fia.org/articles/fia-releases-annual-trading-statistics-showing-record-etd-volume-2018>. Similarly, the trading of over-the-counter derivatives expanded from about \$72 trillion in notional amount in 1998 to about \$595 trillion in 2018. See Bank of International Settlements, OTC derivatives notional amount outstanding by risk category; available at https://stats.bis.org/statx/srs/tseries/OTC_DERIV/H:A:A:A:5J:A:5J:A:TO1:TO1:A:A:3:C?t=D5.1&p=20172&x=DER_RISK.3.CL_MARKET_RISK.T:B:D:A&o=w:19981..s:line.nn,t:Derivatives%20risk%20category.

² See G20, Leaders' Statement: The Pittsburgh Summit (Sept. 24–25, 2009); available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

2013 to further implement DCO core principles and Title VIII of the Dodd-Frank Act. Based on experience in implementing these regulations and subsequent developments, including the establishment of international principles for clearing, the CFTC staff has provided guidance on the new regulations. It is now appropriate for the Commission to address this experience and these developments through amendments to our regulations.

Codification and Clarification

The NPRM includes numerous amendments that clarify, further define, or provide more explicit direction to market participants. Governance requirements are more fully developed and applied across all DCOs. The NPRM adds new regulations 39.24, 39.25, and 39.26 that establish governance requirements for DCOs to better ensure that DCOs are well managed.³ These amendments provide greater certainty and uniform rules, and are important not only for fairness and consistency, but to improve risk management across the clearing space. The changes may help guard against risks from governance failures.

While the new governance regulations are beneficial, many of the provisions set out only general principles and do not provide specific guidance or prescriptive standards. I look forward to public comment on whether more explicit guidance or requirements would be appropriate for any specific provisions. In particular, I look forward to comments on whether members should play a larger role in governance.

Under the NPRM, regulation 39.16 would be amended to improve requirements around member default management.⁴ The recent member default at NASDAQ Clearing reinforces the importance of default management mechanisms and information sharing when a default occurs.⁵ The amendments explicitly require DCOs to have a default committee that must include clearing members. In addition, the amendments would require a DCO to include members in tests of the default management plan. I look forward to comments on how and when DCO members should be included in default management.

In addition to the above, the NPRM would provide a number of more discrete improvements, such as an explicit requirement for initial margin to cover concentration risk; a requirement for DCO personnel to certify certain reports; and several new reporting requirements around settlement bank arrangements, depositories, and liquidity funding arrangements. Clarifying these types of issues will help maintain consistent, objective, and transparent oversight of registered DCOs.

Issues Warranting Further Comment and Consideration

The NPRM includes several proposed amendments that, while beneficial in some respects, may also present additional issues for the Commission to consider in developing the final rule. Comments in these areas would be particularly helpful to inform the Commission in its deliberations.

Changes to regulation 39.13(g)(8) regarding calculation of initial margin and in particular, excess margin, attempt to incorporate in the regulation, and to clarify, staff guidance.⁶ Getting initial margin calculations right is critical to providing sufficient resources to cover variation margin shortfalls that may occur when resolving a member's default. The proposed standard for margin to be "commensurate with the risk presented by each customer account," as a principle, seems appropriate. However, little guidance is provided on how that principle should be applied or the appropriate parameters for consideration. Given the importance of initial margin calculations, I look forward to comments on whether the Commission should provide a more detailed standard in the regulation or further guidance on the calculation.

New regulation 39.13(i) provides explicit procedures and requirements for filing DCO rules to implement a cross-margining program with other clearing organizations.⁷ From a general policy perspective, establishing explicit procedures in regulation for evaluating such arrangements would facilitate consistent, objective reviews by the Commission.

However, multi-entity cross-margining—which could cross borders and involve multiple regulatory regimes of different regulators—creates additional layers of legal, operational, and financial risk that may be difficult to evaluate. The members of the DCO could be affected in ways not previously contemplated and that may be more obscure to the members and difficult for them to assess. The information that the DCO would be required to provide to the Commission under the NPRM is fashioned from less complex portfolio margining evaluation requirements and is general in nature. Will a bankruptcy involving a member of one of the clearing organizations, the DCO, or the other clearing organization affect the other entity and its members in ways that are not anticipated? Are there margin model risks, such as greater concentration risk across both entities, that are not properly accounted for in the proposed regulations? Do members of the DCO have other concerns and do they have appropriate mechanisms to voice those concerns through the DCO rules, governance structures, and/or CFTC review procedures? I look forward to reviewing the comments on these and other issues regarding the proposed multi-entity cross margining regulations.

Finally, the NPRM would establish regulation 40.5 as the mechanism for Commission review of certain DCO rule sets including: (1) A request to transfer a DCO's open interest—in many cases its entire open interest, (2) cross-margining programs among different clearing organizations—including across borders and for entities subject to different regulators, and (3) commingling of futures, options, and swaps positions in a section 4d(a) futures account. These rule reviews could involve consideration of novel issues, customer protections, and other factors. Accordingly, I have some concern that regulation 40.5 may not provide sufficiently robust review procedures or the Commission with adequate authority to require a DCO to mitigate risks arising from the proposed actions.

Section 40.5 was intended to address voluntary submission of DCO rule changes pursuant to section 5c(c) of the Commodity Exchange Act. While the process for submission and Commission review is more detailed under regulation 40.5 than under regulation 40.6, regulation 40.5 provides for automatic approval after 45 days if that period is not extended by the Commission and a narrow standard of review; namely, the Commission shall approve a DCO rule under review unless it "is inconsistent with the [Commodity Exchange] Act or Commission's regulations." However, the DCO activities to which this review procedure would be applied under the NPRM are significant actions that likely will raise customer protection concerns, entail a sophisticated risk management analysis, and call for a more nuanced review and response than can be accomplished under the blunt "inconsistent with the CEA" standard that governs the Commission under regulation 40.5.

Accordingly, I encourage comments on whether regulation 40.5 is the appropriate mechanism to review these proposed DCO actions or whether a more balanced procedure should be employed that would provide the Commission more flexibility to ensure the proposed actions adequately address issues involving customer protection, potential risks to FCMs, and market integrity.

Conclusion

In conclusion, I commend the staff of the Division of Clearing and Risk for their efforts in preparing the NPRM to codify practices that are currently addressed through staff guidance and to conform our regulations to developments that have occurred since the regulations were issued. The NPRM will help clarify and provide explicit rules for clearing organizations that provide a vital service to derivatives markets. Finally, I look forward to the public comments on the NPRM, particularly on the proposed amendments discussed above.

[FR Doc. 2019-09025 Filed 5-15-19; 8:45 am]

BILLING CODE 6351-01-P

³ See NPRM section IV.J.

⁴ See NPRM section IV.F.

⁵ See Luke Clancy, *Margin or membership? Regulators react to Nasdaq default*, Risk.net (Feb. 7, 2019) available at: <https://www.risk.net/regulation/6366441/margin-or-membership-regulators-react-to-nasdaq-default>.

⁶ See NPRM section IV.D.3.f.

⁷ See NPRM section IV.D.5.



FEDERAL REGISTER

Vol. 84

Thursday,

No. 95

May 16, 2019

Part III

The President

Executive Order 13872—Economic Empowerment of Asian Americans and Pacific Islanders

Presidential Documents

Title 3—

Executive Order 13872 of May 13, 2019

The President

Economic Empowerment of Asian Americans and Pacific Islanders

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to empower Asian Americans and Pacific Islanders to improve the quality of their lives, raise the standard of living of their families and communities, and more fully participate in our economy, it is hereby ordered as follows:

Section 1. *Policy.* There are presently more than 20 million people of Asian American or Pacific Islander (AAPI) descent residing in the United States, which amounts to more than 6 percent of the population. The AAPI population is the most rapidly growing ethnic group in the country and is expected to increase to over 40 million individuals by 2060. At that time, people of AAPI descent are projected to be more than 9 percent of the Nation's population. Asian Americans and Pacific Islanders have helped build a strong and vibrant America. Generations of AAPI individuals, families, and communities are composed of diverse and varied ethnicities, languages, and cultures, and include residents of United States Pacific Island territories and freely associated states. They play an important economic role, having started businesses and generated jobs that pay billions of dollars in wages and taxes, including founding some of our Nation's most successful and innovative enterprises. Asian Americans and Pacific Islanders have made important contributions to science and technology, culture and the arts, and the professions, such as business, law, medicine, education, politics, and economics. Their shared accomplishments and legacies are an inspirational, significant, and celebrated part of the American experience.

While we celebrate the many contributions of the AAPI communities to our Nation, we also recognize that AAPI communities and enterprises encounter challenges accessing economic resources and opportunities. Many of the more than 1.9 million AAPI-owned enterprises are small sole-proprietorships that need assistance to access available resources such as business development counseling, small-business loans, and government procurement opportunities. Today's AAPI workforce is the largest it has been in American history, and we will continue striving toward furthering AAPI advancement in employment and workforce development as well as increasing AAPI participation and representation in the upper levels of leadership in the public and private sectors.

The purpose of this order is to establish the President's Advisory Commission on Asian Americans and Pacific Islanders and the White House Initiative on Asian Americans and Pacific Islanders. Each will work to broaden access by AAPI employers and communities to economic resources and opportunities, thus empowering AAPIs to improve the quality of their lives, raise the standard of living of their families and communities, and more fully participate in our economy. Additionally, each will work to advance relevant evidence-based research, data collection, and analysis for AAPI populations, subpopulations, and businesses.

Sec. 2. *President's Advisory Commission on Asian Americans and Pacific Islanders.* The President's Advisory Commission on Asian Americans and Pacific Islanders (the "Commission") is established in the Department of Commerce.

(a) *Mission and Function of the Commission.* The Commission shall provide advice to the President, through the Secretary of Commerce and the Secretary of Transportation, who shall serve as Co-Chairs of the Initiative described in section 3 of this order, on:

(i) the development, monitoring, and coordination of executive branch efforts to broaden access by AAPI employers and communities to economic resources and opportunities;

(ii) strategies for encouraging innovation and entrepreneurship in AAPI communities, empowering the economic growth of AAPI enterprises and communities, and increasing AAPI business diversification, including through general reductions in regulatory and tax burdens;

(iii) strategies for increasing Federal procurement opportunities for AAPI enterprises;

(iv) strategies for increasing participation of AAPI enterprises in partnerships between the public and private sectors;

(v) economic strategies for AAPI enterprises and communities to employ existing knowledge and relationships in order to pursue trade and investment opportunities in the Asia-Pacific region;

(vi) opportunities to empower students and families with the freedom to pursue the educational opportunities that best prepare them for success in life and work;

(vii) strategies for increasing the diversity of our workforce with greater inclusion of AAPI employees through better recruitment, training, educational workshops, career development, advancement, vocational training, or other appropriate and effective means;

(viii) the compilation and analysis of research and data related to AAPI populations, subpopulations, and businesses; and

(ix) an analysis of the economic condition of the United States Pacific Island territories and freely associated states in an effort to devise strategies for helping each island develop and maintain a strong and diversified economy that supports its residents.

(b) *Membership of the Commission.* The Commission shall consist of members appointed by the President who are United States citizens or nationals, or who are citizens of the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia who are subject to an applicable compact of free association with the United States, and shall include individuals having a history of engagement and involvement with AAPI communities and enterprises. The President shall designate one member of the Commission to serve as Chair.

(c) *Administration of the Commission.* (i) The Secretary of Commerce, in consultation with the Secretary of Transportation, shall designate an Executive Director for the Commission. The Department of Commerce shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations, and shall, as necessary and appropriate under section 1535 of title 31, United States Code, enter into one or more agreements to obtain goods or services from the Department of Transportation in support of the Commission. The heads of other executive departments and agencies shall assist and provide information to the Commission, consistent with applicable law, as may be necessary to carry out its functions. Each executive department and agency shall bear its own expenses of assisting the Commission.

(ii) Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the “Act”), may apply to the administration of the Commission, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary

of Commerce, in consultation with the Secretary of Transportation, in accordance with the guidelines issued by the Administrator of General Services.

(d) *Termination Date.* The Commission shall terminate 2 years from the date of this order, unless renewed by the President prior to that date.

Sec. 3. *White House Initiative on Asian Americans and Pacific Islanders.* There is established the White House Initiative on Asian Americans and Pacific Islanders (Initiative), a Federal interagency working group whose members shall be selected by their respective agencies. The Secretaries of Commerce and Transportation shall serve as the Co-Chairs of the Initiative and shall convene regular meetings of the Initiative, determine its agenda, and direct its work pursuant to the guidance and direction of the President. The Executive Director established in section 2(c) of this order shall serve in the same role for the Initiative and shall report to the Co-Chairs, or their designees, on Initiative matters.

(a) *Mission and Function of the Initiative.* The Initiative shall work to broaden AAPI access to economic resources and opportunities and thus empower AAPIs to improve the quality of their lives, raise the standard of living of their families and communities, and more fully participate in our economy. The Initiative shall advise the Co-Chairs on the implementation and coordination of Federal programs as they relate to AAPI access to economic resources and opportunities.

(b) *Membership of the Initiative.* In addition to the Co-Chairs, the Initiative shall consist of senior officials from the following executive branch departments, agencies, and offices:

- (i) the Department of State;
 - (ii) the Department of the Treasury;
 - (iii) the Department of Defense;
 - (iv) the Department of Justice;
 - (v) the Department of the Interior;
 - (vi) the Department of Agriculture;
 - (vii) the Department of Labor;
 - (viii) the Department of Health and Human Services;
 - (ix) the Department of Housing and Urban Development;
 - (x) the Department of Energy;
 - (xi) the Department of Education;
 - (xii) the Department of Veterans Affairs;
 - (xiii) the Department of Homeland Security;
 - (xiv) the Office of Management and Budget;
 - (xv) the Environmental Protection Agency;
 - (xvi) the Small Business Administration;
 - (xvii) the Office of Personnel Management;
 - (xviii) the Social Security Administration;
 - (xix) the White House Office of Cabinet Affairs;
 - (xx) the White House Office of Intergovernmental Affairs;
 - (xxi) the White House Office of Public Liaison;
 - (xxii) the National Economic Council;
 - (xxiii) the Domestic Policy Council;
 - (xxiv) the Office of Science and Technology Policy;
 - (xxv) the Office of the U.S. Intellectual Property Enforcement Coordinator;
- and

(xxvi) other executive branch departments, agencies, and offices as the President may, from time to time, designate.

The heads of each of the foregoing executive branch departments, agencies, and offices shall designate the senior Federal officials who will serve as their respective representatives on the Initiative. At the direction of the Co-Chairs, the Initiative may establish subgroups consisting exclusively of Initiative members or their designees under this section, as appropriate. To the extent permitted by law, members of the Initiative, or their designees, shall devote the time, skill, and resources necessary and adequate to carry out the functions of the Initiative. Each executive department, agency, and office shall bear its own expenses for participating in the Initiative.

(c) *Administration of the Initiative.* The Department of Commerce shall provide funding and administrative support for the Initiative to the extent permitted by law and within existing appropriations, and shall, as necessary and appropriate under section 1535 of title 31, United States Code, enter into one or more agreements to obtain goods or services from the Department of Transportation in support of the Initiative.

Sec. 4. General Provisions. (a) This order supersedes section 1(s) of Executive Order 13811 of September 29, 2017 (Continuance of Certain Federal Advisory Committees), and Executive Order 13515 of October 14, 2009 (Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs).

(b) Nothing in this order shall be construed to impair or otherwise affect:

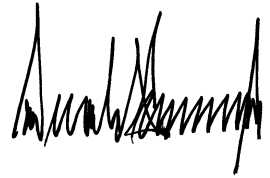
(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, the term “Asian American” includes persons within the jurisdiction of the United States having origins or ancestry in any of the original peoples of East Asia, Southeast Asia, or South Asia; and the term “Pacific Islander” includes persons within the jurisdiction of the United States having origins or ancestry in any of the original peoples of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or other Pacific Islands.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
May 13, 2019.

Reader Aids

Federal Register

Vol. 84, No. 95

Thursday, May 16, 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, MAY

18383-18694.....	1
18695-18970.....	2
18971-19682.....	3
19683-19852.....	6
19853-20004.....	7
20005-20238.....	8
20239-20536.....	9
20537-20764.....	10
20765-21232.....	13
21233-21686.....	14
21687-22048.....	15
22049-22326.....	16

CFR PARTS AFFECTED DURING MAY

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

1800.....20239

3 CFR

Executive Orders:

13515 (Superseded by

EO 13872).....22321

13811 (Superseded by

EO 13872).....22321

13870.....20523

13871.....20761

13872.....22321

Proclamations:

9822 (See Proc.

9880).....21229

9842 (See Proc.

9880).....21229

9865.....18695

9866.....18969

9867.....19683

9868.....19685

9869.....19687

9870.....19689

9871.....19691

9872.....19693

9873.....19695

9874.....19697

9875.....19851

9876.....20529

9877.....20531

9878.....20533

9879.....20535

9880.....21229

9881.....21685

9882.....22039

9883.....22041

9884.....22043

9885.....22045

Administrative Orders:

Memorandums:

Memorandum of Apr.

22, 2019.....19853

Notices:

Notice of May 8,

2019.....20537

Notice of May 8,

2019.....20539

Notice of May 13,

2019.....22047

6 CFR

5.....20240

7 CFR

610.....19699

622.....19699

625.....19699

652.....19699

985.....19703

1220.....20765

1260.....20765

1455.....19699

Proposed Rules:

51.....19743

930.....20043

8 CFR

214.....20005

10 CFR

72.....21687

Proposed Rules:

50.....21727

52.....21727

72.....21728

430.....18414, 20048

431.....18414, 20048, 20704

11 CFR

100.....18697

101.....18697

102.....18697

104.....18697

105.....18697

108.....18697

110.....18697

114.....18697

12 CFR

204.....20541

208.....21691

211.....21691

Ch. VI.....21693

Proposed Rules:

217.....21988

225.....21634, 21988

231.....18741

238.....21634, 21988

243.....21600

252.....21988

381.....21600

Ch. X.....21732

1003.....20049, 20972

1005.....21729

13 CFR

Proposed Rules:

124.....21256

127.....21256

14 CFR

25.....18701, 20021

39.....18704, 18707, 19709,

20242, 20246, 20248, 20252,

20542, 20772

71.....20256, 20257, 20258,

20774

97.....18971, 18973

Proposed Rules:

25.....18997, 20053, 21733

39.....19745, 19879, 19881,

19885, 19888, 19891, 20054,

20057, 20300, 20303, 20822,

20823, 21268, 21270, 21273,

21276, 21279, 22075	30 CFR	271.....20549	54.....19874
71.....20306, 22078	250.....21908	300.....20550, 21708	64.....19874
15 CFR	916.....20259	1552.....21714	73.....21718
744.....21233	934.....20264	Proposed Rules:	76.....18406
Proposed Rules:	Proposed Rules:	1.....20062	Proposed Rules:
960.....21282	913.....18428	52.....19005, 19007, 19750,	1.....18757, 20077
16 CFR	917.....18430, 20595	19893, 20070, 20071, 20318,	2.....20088
18.....20776	925.....18433, 20597	20604, 20838, 22082, 22084,	30.....20077
433.....18711	935.....20599	22087, 22091, 22093	73.....19897
460.....20777	938.....18435	63.....18926, 20208	95.....20088
Proposed Rules:	31 CFR	80.....21305	48 CFR
Ch. I.....18746	Proposed Rules:	81.....19007, 19893, 22093,	Ch.1.....19834, 19847
17 CFR	33.....19000	22101	1.....19839
Proposed Rules:	32 CFR	131.....18454	2.....19835, 19839
1.....22226	151.....18383	174.....20320	3.....19839
23.....21044	Proposed Rules:	180.....20320, 20843	4.....19837, 19839
39.....22226	199.....18437	300.....20073	5.....19839
43.....21044	200.....18437	41 CFR	6.....19839
45.....21044	33 CFR	Proposed Rules:	7.....19839
49.....21044	100.....18727, 18974, 19715,	App. C Ch. 301.....19895	8.....19837, 19839
140.....22226	20027, 20028, 20270, 21699	304-2.....19895	9.....19839
20 CFR	165.....18387, 18389, 18975,	304-3.....19895	10.....19835
655.....20005	20028, 20029, 20034, 20035,	304-5.....19895	11.....19839
21 CFR	20544, 20546, 20547, 21701,	304-6.....19895	12.....19835
1308.....20023	21703, 21704	42 CFR	13.....19835
Proposed Rule:	326.....18979	403.....20732	16.....19837, 20292
73.....20060	Proposed Rules:	405.....19855	17.....19837, 19839
1308.....18423	100.....20060, 20307, 20602,	423.....19855	18.....19835
22 CFR	22079	447.....19718	19.....19839
40.....19712	165.....18452, 19003, 20307,	484.....20810	22.....19839
24 CFR	20318, 20825, 21302	1001.....20810	26.....19835, 19839
Proposed Rules:	175.....20827	Proposed Rules:	30.....19839
5.....20589	36 CFR	410.....18748	31.....19839
204.....19748	Proposed Rules:	412.....19158	35.....19837
26 CFR	7.....21738	413.....19158	45.....19839
1.....20790	37 CFR	414.....18748	50.....19839
300.....20801	201.....20273	424.....18748	52.....19839
Proposed Rules:	38 CFR	488.....18748	53.....19839
1.....18652, 18999, 21198	17.....21668	493.....18748	Proposed Rules:
29 CFR	39 CFR	495.....19158	2.....20607
1602.....18383, 18974	111.....18731, 21238	44 CFR	49 CFR
1904.....21416	233.....20804	64.....18403, 22049	1002.....20292
1910.....21416	3020.....18982	45 CFR	1312.....20292
1915.....21416	3050.....20806	Proposed Rules:	Proposed Rules:
1926.....21416	Proposed Rules:	155.....19000	240.....20472
4022.....21698	3020.....21304	46 CFR	571.....21309
4041A.....18715	40 CFR	401.....20551	576.....21741
4245.....18715	49.....21240	404.....20551	50 CFR
4281.....18715	52.....18392, 18736, 18738,	Proposed Rules:	17.....19877
Proposed Rules:	18989, 18991, 19680, 19681,	25.....20827	229.....22051
548.....21300	20274, 20808, 21253, 22049	355.....18468	300.....18409
778.....21300	81.....21253	356.....18469	622.....19728, 22073
791.....21301	158.....18993	47 CFR	635.....20296
	180.....18398, 20037, 21706	2.....20810	648.....20820, 21723
		25.....20810	660.....19729, 20578
		30.....18405, 20810	Proposed Rules:
		52.....19874	17.....19013, 21312
			218.....21126
			648.....18471, 20609, 22104

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 May 14, 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.